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WM. R. STANS

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 623.

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

against

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA, as Fiscal for the City of Manila and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila,

Respondents.

BRIEF OF PETITIONERS IN REPLY.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
MAHLON B. DOING,
Counsel for Petitioners.

TABLE OF CONTENTS.

I. PAGE

This Court is in No Degree Bound by the Construction Placed by the Court Below Upon Act 2972 2

II.

Respondents' Treaty Argument 3

III.

Respondents' Treatment of the Facts in Attempting to Justify the Law as One of Over-Riding Social Necessity is Not Consistent and is Not Sustained by the Record..... 4

IV.

The Construction Placed by the Philippine Supreme Court Upon Act 2972 is Absolutely Indefensible Because Making a New and Quite Dissimilar Statute. No Better Illustration of Spurious Interpretation Can be Found in the Books 9

TABLE OF CITATIONS.

	PAGE
Baker *v.* Warner, 231 U. S. 588	3
Camp *v.* Gress, 250 U. S. 308	3
Central Land Co. *v.* Laidley, 159 U. S. 103	3
Cincinnati Railway Co. *v.* Kentucky, 252 U. S. 408	3
Copper Queen Mining Co. *v.* Arizona, 206 U. S. 474	3
Cordova *v.* Folgueras, 227 U. S. 375	10
Crandall, Treaties, Their Making and Enforcement, 2nd Ed., p. 417	4
De La Rama v. De La Rama, 201 U. S. 303	2, 3
Diaz *v.* Gonzales, 261 U. S. 102	10
Lau Ow Bew, Petitioner, 141 U. S. 583	4
Londoner *v.* Denver, 210 U. S. 373	3
Muller *v.* Oregon, 208 U. S. 412	8
Philippine Code of Commerce, Art. 33	9
Poon *v.* Miller, 234 S. W. (Texas), 573	4
Soon Hing *v.* Crowley, 113 U. S. 703	6
Treaty with China, 1880, Art. II	3
Treaty with China, 1868, Art. VI	3
Young *v.* Rafferty, 33 Phil. Rep., 556	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected, Petitioners, vs. W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA, as Fiscal for the City of Manila and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents.	No. 623.

BRIEF OF PETITIONERS IN REPLY.

The respondents' arguments herein, as gathered from their brief, indicate that respondents have now definitely abandoned any serious attempt to justify Act 2972 as written and now rely wholly upon the construction of the Act adopted by the Philippine Court.

Respondents' argument upon the purpose and operation of the law is addressed to that law "as limited by the Supreme Court of the Philippine Islands," "to cure

constitutional difficulties'' (Resp. Brief, pp. 27, 32, 21).

They also insist that this Court in reviewing the decision of the Philippine Supreme Court is bound by the latter court's finding as to the purpose of the law, upon the principle that the lower court's findings, unless entirely without support, are accepted. *De La Rama* v. *De La Rama*, 201 U. S. 303.

If this be so, then would this Court be bound by the other finding of the Philippine Supreme Court, that as literally construed this law is *in fact* so arbitrary, unreasonable and confiscatory in operation upon the Chinese merchants, as to render it unconstitutional (R., p. 1197). If this court should deem itself bound by the lower court's finding as to the *purpose* of the law, it must by parity of reasoning accept that court's finding as to the *operation* of the law as literally construed.

The willingness of respondents to follow the Philippine Court in abandoning the claim of constitutionality for the law as written, has the effect of simplifying the reply to their argument.

We consequently, address ourselves briefly to certain salient points of respondents' brief.

I.

This Court is in No Degree Bound by the Construction Placed by the Court Below Upon Act 2972.

Respondents' position as to the controlling effect of the Philippine Court's construction of the law in question, is based upon a misconception and misapplication of the principles governing the review by this Court of the decisions of *state* tribunals.

Upon appeals from state courts, this Court being confined in its review to the federal question involved, is bound by the statutory construction of the state court, if such construction renders the law constitutional and

thus removes from the case any reviewable question. *Cincinnati Railway Co.* v. *Kentucky,* 252 U. S. 408; *Londoner* v. *Denver,* 210 U. S. 373.

However, the foregoing principles have not the slightest application to a review by this Court of a decision of the Philippine Supreme Court.

The review of a Philippine decision here, is exactly the same review as that given upon the decision of an intermediate appellate *federal* court. *De La Rama* v. *De La Rama, supra,* at page 309.

Upon such a review the whole case is before this Court and its duty is to render the judgment upon the whole case which the lower court should have rendered upon the record before it. *Camp* v. *Gress,* 250 U. S. 308, 318; *Baker* v. *Warner,* 231 U. S. 588, 593.

This court in reviewing a federal decision is never bound by the lower court's construction, even as regards a *state* statute. *Central Land Co.* v. *Laidley,* 159 U. S. 103, at 111, and cases cited.

Finally, in every case involving a statute of a territory or possession, this Court is not only not bound by the lower court's construction but it

"cannot refuse to exercise its own judgment,"

Copper Queen Mining Co. v. *Arizona,* 206 U. S. 474 at 479, and cases cited.

II.

Respondents' Treaty Argument.

Respondents' argument with regard to the Treaty with China of 1880 overlooks entirely the provisions of Article II thereof, which operates concurrently with Article VI of the Treaty of 1868. The effect of these Treaties to protect the Chinese in the territories of the United States at the present day, has been recently

recognized in the decision in *Poon* v. *Miller*, 234 S. W. (Texas) 573, (1919); see also *Lau Ow Bew, Petitioner*, 141 U. S. 583, 587; and CRANDALL, TREATIES, THEIR MAKING AND ENFORCEMENT, 2nd Ed., p. 417, and decisions there collated.

III.

Respondents' Treatment of the Facts in Attempting to Justify the Law as One of Over-Riding Social Necessity is Not Consistent and is Not Sustained by the Record.

(a).

The burden of respondents' argument to establish some colorable necessity for any law upon the subject of the keeping of books by the Chinese, is that the Chinese have been guilty of gross frauds upon the revenue and that the Revenue Officials have been at the mercy of the Chinese in this regard by reason of an alleged inability to examine their books.

Their attempt to establish these facts is confined to the testimony of the Internal Revenue Officials and particularly to the testimony of one Posadas, the Acting Collector of Internal Revenue.

We do not desire to enter into detailed controversy as to the effect and credibility of such testimony. We assert, however, that a reference to the record will demonstrate to this Court the equivocal, inconsistent and prejudiced nature of such evidence.

Respondents attempt to make capital of *the excluded* Exhibits "X" and "X-1" in this respect, and charge petitioners with bad faith in securing the exclusion of these exhibits from the evidence.

We are constrained to briefly call attention to the true history of those exhibits.

Petitioners' estimate, that the Chinese merchants of the Philippines do 60% of the mercantile business, was based upon the fact, established by the record in the case of *Young* v. *Rafferty*, 33 Phil. Rep., 556, that the Chinese merchants paid 60% of the taxes. *This fact had been established in the latter case by the records of the Bureau of Internal Revenue* (R., p. 1128).

Shortly after the beginning of the present litigation, counsel for the petitioners addressed a letter to the present Collector of Internal Revenue in which they requested statistics showing the percentage of taxes paid by the Chinese merchants during the years covered by exhibits "X" and "X-1" (R., p. 949).

On June 29, 1923, Mr. Posadas answered that inquiry with the laconic information—"no statistics kept" (R., p. 952).

During the whole course of this litigation petitioners' counsel attempted to obtain from the Bureau of Internal Revenue the statistics requested, but were constantly met with subterfuge and delay until it became apparent that the Bureau was unwilling or unable to produce the statistics for examination and *cross-examination* upon the trial.

On the day after petitioners had closed their proofs in the case and when there could be no cross-examination, the respondents attempted to introduce the exhibits in question in evidence (R., pp. 1122 *et seq.*).

On February 15, 1924, the Philippine Supreme Court, after having fully heard the views of both sides with reference to these exhibits, very naturally excluded them from evidence (R., p. 1141).

These exhibits in and of themselves prove nothing of importance. If, during the years mentioned therein the Chinese were paying the percentage of taxes as therein alleged, then it can only be that petitioners' calculation that the Chinese do 60% of the mercantile business of the Islands, based as it was upon the percentage of taxes

paid, is erroneous, and that the Chinese in the Islands do only that percentage of business which is represented by the percentage of taxes which they pay.

As opposed to the pretended effect of these exhibits and the exaggerated general estimates of Mr. Posadas that *several millions* are lost annually to the Treasury in Chinese taxes, is the specific evidence upon the question which his Bureau placed in the Record (R., pp. 1070, 940, 941).

Mr. Posadas himself has testified that upon an examination of 477 Chinese establishments, being *all* of those suspected, under-declarations amounting to P. 600,000 were found, which amounted in a difference of taxes of not exceeding P. 9,000 (R., pp. 698, 941).

This important admission conclusively eliminates two of the fundamental contentions upon which respondents' entire structure of legislative purpose and necessity is founded, because it demonstrates that:

First, all suspected under-declarations by the Chinese were discoverable by the use of Chinese accountants without the necessity for Act 2972, and *Second,* even upon the violent assumption that an examination of the books of all Chinese establishments would disclose under-declarations in the same proportion as did the suspected cases, *the taxes which the Government was temporarily losing but which it would obtain in due course and without any necessity for the Bookkeeping Law, would not exceed P. 200,000 per annum.*

Much is said by respondents as to the legislative purpose in passing Act 2972, to which we need only respond in the words of the quotation from Mr. Justice Field, which respondents have omitted from their reference to the decision, in *Soon Hing* v. *Crowley,* 113 U. S. 703 at 710.

> "The motives of the legislators, considered as the purposes they had in view, will always be

presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments."

(b).

Respondents' brief would have us believe that the evidence justifies the conclusion that there are practically no Chinese merchants in the Philippine Islands unable to keep their books of account in either English, Spanish, or a local dialect, and that there has been a failure of proof upon behalf of petitioners in this respect.

As opposed to this present position of respondents, it is interesting to notice the following concessions found in the brief of Mr. Guevara, Prosecuting Attorney for the City of Manila, submitted in opposition to the petition for certiorari herein:

> "It is a proven fact that out of 12,000 Chinese merchants in the Philippines only some 4,000 are unable to keep their books of account in either English, Spanish, or native dialect" (Brief, p. 9).
>
> "And requiring a Chinese merchant to keep his books of account in a language unknown to him might force him to abandon his business" (Brief, p. 29).

It may, therefore, be seen that up to the present the respondents have never contended, as they now apparently do for the first time, that the Bookkeeping Law would not operate as an extreme hardship upon at least a substantial portion of the Chinese community.

Respondents' claim as to petitioners' failure of proof with regard to the hardship involved in the operation of this law, is interesting. It would appear that the only testimony which they would consider satisfactory in this regard, would be the unanimous individual testimony of each of the 12,000 Chinese merchants in the

Philippine Islands. The Court will scarce sanction so extreme a demand.

It is conceded that there was and is some slight conflict of evidence with regard to these questions. It is submitted however, that when consideration is given to the nature, number and character of petitioners' witnesses as opposed to those of respondents', there can be no doubt as to where the overwhelming weight of the evidence lies.

If there remains any doubt in this regard, however, it would seem to be clearly disposed of by an application of the principle thus stated in *Muller* v. *Oregon*, 208 U. S. 412, 420:

> "At the same time, when a question of fact is debated and debateable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge."

The widespread condemnation of Act 2972 for its necessarily disastrous operation and effect upon the Chinese, voiced by the various Chambers of Commerce, by the War Department, by Congressmen and Congressional Committees and by non-Chinese business houses, added to the direct testimony of such witnesses as the Hon. William T. Nolting, Mr. H. B. Pond and the late Dr. Pardo de Tavera, can leave little room for substantial controversy.

IV.

The Construction Placed by the Philippine Supreme Court upon Act 2972 is Absolutely Indefensible Because Making a New and Quite Dissimilar Statute. No Better Illustration of Spurious Interpretation Can be Found in the Books.

We need not repeat any part of what was said in our main brief upon the obvious character of the lower court's construction as one of ultra judicial legislation as well as one leaving the statute still too vague for enforcement.

We desire, however, to call attention to the respondents' admission in the brief of Mr. Guevara, that the law as written is "*apparently unambiguous*" (p. 43). This admission is literally true, for the lack of any ambiguity in the law is apparent.

Respondents ask that the provisions of Article 33 of the Philippine Code of Commerce, which prescribes what books of account shall be kept by merchants, be read in connection with the Bookkeeping Law. To this we readily assent.

The Code of Commerce provides exactly what books are to be kept by a merchant. If this definition is to be read into Act 2972, then the decision below erroneously fixed as the criterion the Internal Revenue regulations in effect at the beginning of the action requiring different books. This claim as to the applicability of the Code of Commerce is plausible, but respondents have overlooked the fact that it completely negatives their own argument as to the validity of the decision of the Supreme Court.

To respondents' suggestion that Act 2972 should be construed with a view to the Spanish law of the Philippines, it is sufficient to mention the fundamental

principle stated by Mr. Justice Holmes, that the Spanish Law of our possessions—

> "has to bend to the expressed will of the United States."
>
> *Diaz* v. *Gonzales*, 261 U. S. 102, 106.

Neither can the fact that somewhat similar laws are in operation in certain foreign jurisdictions under widely dissimilar conditions have any possible relevancy, for the reason that in none of those jurisdictions is the law-making power restricted by constitutional limitations.

> "But we have to remember that the law-making power of Spain was not restricted in the way familiar to us."
>
> *Cordova* v. *Folgueras*, 227 U. S. 375 at 379.

Respondents' effort to justify the legislation of the Philippine Supreme Court as having rendered the law definite and certain in its requirements, calls for some comment.

It will be noticed that the construction of the Philippine Court makes the law read that there shall be kept in the prescribed languages the books

> "required for taxation purposes by Regulations of the Bureau of Internal Revenue, *in effect when this action was begun*" (R., p. 1202).

The impossibility of this construction was distinctly called to the Supreme Court's attention by counsel for petitioners in an attempt to obtain a re-hearing.

If the Regulations to be looked to for the books covered by this law are those in effect "when this action was begun," what was the meaning of the law during the period of some two years between the time

of its passage and the date of the commencement of this action? Did the law have any meaning during that period and was it necessary that any books should be then kept?

It will be noticed that the construction of the Court delegates no authority to the Bureau of Internal Revenue to affect the law by a change of their Regulations. The Court apparently shrank from delegating such an authority in the complete absence of a word in the Statute to justify it. Why it "froze" into Act 2972 the specific regulations in force when this action began, we do not know.

Suppose that at some future time the Bureau of Internal Revenue changes its Regulations so that different books are required to be kept than those which were required at the time of the commencement of this action. Which set of books, under the lower court's construction, is the Chinaman to keep in the specified languages? Did the judicially created power of delegated legislation die with the action, or does it go rolling on through time?

The foregoing merely serves in our judgment, to demonstrate that the lower court's construction of Act 2972 is lame, impossible, ridiculous. Under it, for a period of two years between the time when this law was passed and this action was begun, the law was a dead letter, as it may be again when the Bureau of Internal Revenue determines to change its regulations respecting the keeping of books. Can one be convicted of crime in such a situation?

Respondents say that the lower court's construction has "cured" the constitutional uncertainties in the law, and that it contains a "virtual promise" that there will be no discrimination against the Chinese merchants in its enforcement.

A judicial decision which attempts to "cure" unconstitutionality and to make "virtual promises" that minorities shall receive fair treatment is not that kind of judicial power or function contemplated by the Constitution or by Anglo-American institutions. The law is upon its face unconstitutional. The Philippine legislature cannot within the orbit of its power penalize the mere keeping of books in the Chinese language. The Philippine Supreme Court cannot "cure" the defect by abrogating the negative portion of the statute and substituting a direction to keep certain books under the regulations prescribed by a department of the Government to which the statute makes no reference.

The decision of the lower court must therefore be reversed and the law as it stands held to be beyond the power of the legislature.

Respectfully submitted, this 10th day of April, 1926.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
MAHLON B. DOING,
Counsel for Petitioners.

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Supreme Court of the United States

OCTOBER TERM—1925.

No. 623.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,
Petitioners,

vs.

W. TRINIDAD, as Collector of Internal Revenue and others,
Respondents.

Suggestion.

Now comes his Excellency Sao-Ke Alfred Sze, Chinese Minister to the United States of America, by Charles A. Conlon Esq., his Counsel, and respectfully suggests and represents to the Court that the Chinese Government is materially interested in the questions involved in the above entitled cause; that such questions affect all the Chinese merchants in the Philippine Islands, who are about 12,000 in number and do at least 60% of the total business done by all the mer-

chants in said Islands; that such questions include the construction, application and effect of existing treaties between the United States and China, and particularly Article VI of the Treaty of July 28, 1868, and Articles II and III of the Treaty of November 17, 1880; and that it is of great importance to the Chinese Government that such questions should be determined by this Court.

WHEREFORE it is respectfully prayed that this suggestion be received and that this Honorable Court give favorable consideration to the petition for a Writ of Certiorari herein.

Respectfully submitted this 5th day of October, 1925.

CHARLES A. CONLON,
Counsel for his Excellency,
Sao-Ke Alfred Sze.
Chinese Minister to the United
States of America.

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Supreme Court of the United States

OCTOBER TERM—1925

NO. 623

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected, Petitioners

VERSUS

W. TRINIDAD, as Collector of Internal Revenue; EULOGIO P. REVILLA, as Fiscal for the City of Manila; and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents

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BRIEF FOR THE RESPONDENTS IN THE MATTER OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS, WITH MOTION TO ADMIT SAID BRIEF

FREDERIC R. COUDERT, ALLISON D. GIBBS, and FREDERIC R. COUDERT, JR., Counsels for Petitioners, 2 Rector Street, New York City

GUILLERMO B. GUEVARA, Prosecuting Attorney for the City of Manila, Counsel for the Respondents, 53 General Luna, Manila, Philippine Islands

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INDEX OF MATTER

	Page
Motion to admit brief	1
Facts	3–7
Summary of argument	7–11
Argument—	
I. Act No. 2972 is not unconstitutional	11–42
II. Act No. 2972 was properly construed	43–46
III. Construction of Act No. 2972 is not reviewable	46–48
IV. Act No. 2972 does not infringe upon any treaty with China	48–53

TABLE OF CASES

Adams v. Tanner, 244 U. S. 590	28
Atchison & State Ry. v. Vosburg, 238 U. S. 56	29
Bailey v. Alabama, 219 U. S. 219	33
Barbier v. Connolly, 113 U. S. 27, 32	9, 24
Block v. Hirsh, 256 U. S. 135, 158	8, 13, 22, 37
Buchanan v. Warley, 245 U. S. 60	32
Burns Baking Co. v. Bryan, 264 U. S. 504	30
Carey v. South Dakota, 250 U. S. 118, 122	45
Carstairs v. Cochran, 193 U. S. 10	48
Chicago Burlington & Quincy R. R. Co. v. McGuire, 290 U. S. 549, 569	10, 22
Clark v. Nash, 198 U. S. 361	8, 13
Com. Bank v. Buckinham, 5 How. 317, 342	10
Coppage v. Kansas, 236 U. S. 1	29
Dakota Cent. Tel. Co. v. South Dakota, 250 U. S. 163, 185	35
Dominion Hotel v. Arizona, 249 U. S. 265	9, 25
Erie Railroad Co. v. Hamilton, 248 U. S. 369, 371, 372	10
Ex parte Ah Fook, 49 Cal. 402	49
Farncomb v. Denver, 252 U. S. 7, 10	47
German Alliance Ins. Co. v. Kansas, 233 U. S. 389, 411	7, 8, 10, 12, 13

Page

Grainger v. Douglas Park Jockey Club, 148 Fed. 513.... 36
Green v. Fraizier, 253 U. S. 233, 240..... 10, 37
Guinn & Beal v. United States, 238 U. S. 347..... 32
Harriman v. Intestate Com. Comm., 211 U. S. 407, 422.. 10
Heim v. McCall, 239 U. S. 175..... 11, 50
In re Lee Sing, 43 Fed. 359..... 30
In re Matthews, 109 Fed. 603, 616–618..... 10, 43
In re Yick Woo, 68 Cal. 294..... 49
Iowa v. Woods, 246 U. S. 491, 496..... 10
Johnson v. New York Life Ins. Co. 187 U. S. 491, 496.. 10
Knights Templars' Indemnity Co. v. Jarman, 187 U. S. 107, 205 10
La Tourette v. McMaster, 248 U. S. 465..... 8, 10, 13, 38
License Cases, 46 U. S. 504, 582..... 32, 34
Londoner v. Denver, 210 U. S. 373, 379..... 45
McCullouch v. Maryland, 4 Wheat. 316, 421..... 10, 37
Meyer v. Nebraska, 262 U. S. 390..... 25
Middleton v. Texas Power & Light Co., 249 U. S. 510.. 9, 24
Miller v. Board of Public Works (Cal.), 234 Pac. 381.. 35
Mugler v. Kansas, 123 U. S. 623..... 31
Muller v. Oregon, 208 U. S. 412, 420, 421..... 21
Noble State Bank v. Haskell, 219 U. S. 104..... 8, 13
Pacific Gas & E. Co. v. Police Court, 251 U. S. 22..... 37
Patstone v. Pennsylvania, 232 U. S. 138..... 11, 49
Pennsylvania Coal Mining Co. v. Mahon, 260 U. S. 393.. 32
Petersen v. Iowa ex rel. State Treasurer, 245 U. S. 170.. 10, 36
Pierce v. Society of Holy Names, 17 Adv. Op., Oct. Term, 1924 27–28
Pierce Oil Corp. v. Hope, 248 U. S. 498..... 8, 13
Public Utility Com'srs v. Ynchausti & Co., 251 U. S. 401 ..... 9, 23
Puget Sound Agri. Co. v. Pierce Country, 1 Wash. Terr. 159 ..... 11, 51
Purity Extract Co. v. Lynch, 226 U. S. 192..... 10, 37
Quong Ham Wah v. Industrial Comm., 255 U. S. 445, 448–449 47
Quong Wing v. Kirkendall, 223 U. S. 59..... 34
R. Moore & Co. v. North Dakota, 240 U. S. 510..... 9
Rasmussen v. Idaho, 181 U. S. 198..... 48
Ross v. Oregon, 227 U. S. 160, 162..... 10

	Page
Sligh v. Kirkwood, 237 U. S. 52, 59	35
Smiley v. Kansas, 196 U. S. 447, 455	48
Soon Hing v. Crowley, 113 U. S. 703, 710	52
Stadelman v. Minor, 246 U. S. 544	10
Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527	8, 13
St. Louis & Kansas City Land Co. v. Kansas City, 241 U. S. 419, 427	17
The King v. Liau Kiu, 7 Haw. 498	25
Thornton v. Duffy, 254 U. S. 261, 368	46
Truax v. Raich, 239 U. S. 33	28
United States v. Delaware & Hudson Co., 213 U. S. 366, 407	46
United States v. Mason et al., 26 Fed. 1189	8, 12
W. W. Cargill Co. v. Minnesota, 180 U. S. 452, 466–467	47
Yazoo & Miss. Valley R. Co. v. Adams, 181 U. S. 580, 583	48
Yick Woo v. Hopkins, 118 U. S. 356	31, 49

TEXTBOOKS, STATUTES, PHILIPPINE DECISIONS

Page

Estasén, Instituciones de Derecho Mercantil, Vol. 2, p. 126 20–21
Ruling Case Law, Vol. 6, pp. 195–199, 210–211 ..... 10, 38

Act of Congress of July 1, 1902, section 86, 32 Stat. 691, 712 9
Administrative Code, sec. 1459 23
Code of Commerce of—
- Argentina, article 66 8
- Bolivia, article 42 8
- Chile (Alcohol Law), article 32 8
- Colombia, article 32 8
- Ecuador, article 35 8
- France (Decree of Rev. Govt. of) 8
- Guatemala, article 21 8
- Honduras, article 26 8
- Mexico, article 37 .....
- Philippine Islands—
  - Article 15 18
  - Articles 33, 34, 35, 36, 49 ..... 8, 13–14
- Salvador, article 19 8
- Servia, article 11 8
- Spain—
  - Article 54 (old) 20
  - Decision Supreme Court of, February 10, 1879 27
  - Explanatory note 8, 15–18
- Uruguay, article 44 8
- Venezuela, article 35 8

Novísima Recopilación, Laws 12 and 13, tit. 4, Book IX 8, 19–20

Kwong Sing v. City of Manila, 41 Phil. 103 25
Young v. Rafferty, 33 Phil. 556 ..... 4, 6, 27

In the Supreme Court of the United States

OCTOBER TERM—1925

YU CONG ENG and CO LIAM, for themselves and for the benefit of all other persons similarly situated and affected, Petitioners

VERSUS

W. TRINIDAD, as Collector of Internal Revenue; EULOGIO P. REVILLA, as Fiscal for the City of Manila; and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents

[Certiorari to the Supreme Court of the Philippine Islands]

MOTION FOR LEAVE TO FILE MEMORANDUM FOR RESPONDENTS

Now comes the undersigned, in behalf of the respondents in the above entitled case, and moves for leave to file the Brief for Respondents hereto attached.

Manila, February 24, 1926.

GUILLERMO B. GUEVARA
Prosecuting Attorney for the City of Manila
Counsel for Respondents

218279

In the Supreme Court of the United States

OCTOBER TERM—1925

No. .....

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VERSUS

W. TRINIDAD, as Collector of Internal Revenue; EULOGIO P. REVILLA, as Fiscal for the City of Manila; and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents

CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

BRIEF FOR THE RESPONDENTS

FACTS

The following are facts supported by the evidence in this case and so found by the Philippine Supreme Court:

1. That on October 8, 1914, the then Director of the Bureau of Internal Revenue, Mr. James J. Rafferty, issued a circular (Circular Letter No. 467) duly approved by the Secretary of Finance and Justice, wherein, among other things, it was provided:

2. *Records of Merchants and Manufacturers.*—Every merchant and manufacturer subject to the tax imposed by section

14 of Act No. 2339, shall keep a day book, in which he shall enter in detail in English or Spanish every day each of his sales that amount to ₱50 or more, and the daily aggregate amount of sales that are less than ₱50 each. Every merchant and manufacturer shall before using said book serially number its pages in a permanent and legible manner, and shall present it to an internal revenue agent or officer for approval. Cash sales and credit sales shall be entered separately in this book within the period of twenty-four hours following the date on which same are made. If on any date no sales are made, then that fact shall be noted in the book within the said twenty-four hours under the corresponding date. (*Exhibit 31, pp. 1065, 1067, Transcript of Record.*)

2. That the regulation contained in the above circular was designed to protect the Government against evasion of the percentage tax. (*Young* versus *Rafferty, 33 Phil. Rep., 556.*)

3. That the condition complained of by said Collector (i. e. Government losses in the collection of merchants' taxes) which prompted him to issue the aforesaid circular, under the provisions of sections 5 and 6 (*j*) of Act No. 2339, has confronted the Government ever since the present system of internal revenue taxes was inaugurated in 1904. (*Ibid.*)

4. That said circular of the Collector of Internal Revenue was annulled by the Philippine Supreme Court on the ground that "if it was necessary to impose such a burden (to keep sales books in English or Spanish) upon the business community in order that the Government may protect itself from such losses, it was never intended that the initiative should be taken by the Collector of Internal Revenue," and that "it was not for the administrative head of a Government bureau to say that such an obstacle to the collection of taxes shall be removed by imposing burdens not specifically authorized in the law itself"; the court having, however, declared that the question whether public policy required that a law

on the subject should be enacted was for the Legislature itself to determine, without expressing any opinion as to the validity of such a law. (*Ibid.*)

5. That in view of such adverse decision, and of the fact that, besides frequent evasions of the percentage tax, false declarations were being made by many Chinese merchants in their income tax returns, some members of the Legislature presented in different periods bills whose object was to require that merchants' books be kept in English or Spanish. (*Exhibit 31, at p. 1068, Transcript of Record.*)

6. That one of said bills was passed by the Senate during the first period of the Fifth Legislature but was held in abeyance in the House of Representatives, which postponed the consideration thereof in view of its exceptional scope and the large interests to be affected thereby. (*Ibid.*)

7. That in view of such postponement, the then Governor-General, in his message to the Legislature of October 16, 1920, stated, among other things:

> The relation of the Government to private or semi-public business enterprises, either through the police power or the taxing power, requires constant attention and revision. I recommend for your consideration the following provisions to assist in an adequate development of your national business and commercial life and for the proper protection of the public.
>
> * * * * * * *
>
> 5. Legislation as already approved by the Senate should require that all business houses keep their books in English or in Spanish, or in any one of the local Philippine dialects, *in order to avoid wholesale frauds upon the public revenues.* (*Ibid. at pp. 1068, 1069, Transcript of Record.*)

8. That said bill was approved by the Philippine Legislature on February 21, 1921, as Act No. 2972, to take effect November 1, 1921. (*Exhibit 29 at pp. 1060, 1061, Transcript of Record.*)

9. That a few days before November 1, 1921, the date set for the taking effect of the Act, the present Governor-General, Hon. Leonard Wood, addressed a communication to the Legislature, a paragraph of which reads as follows:

> It is evident that the effects of this law (Act No. 2972) might be much more harmful than beneficial to the public interest *if sufficient time were not given for preparation* in the case of merchants and other business men whose transactions are on a relatively small scale, especially to those established at points far distant from the centers of culture or those who, for some weighty reason, may be unable to secure in time the necessary means for complying with the law. (*Exhibit L. at p. 982, Transcrip of Record.*)

10. That in view of such recommendation, the Act was amended by Act No. 2998, providing that it shall take effect on January 1, 1923, or about two years from its approval. "But due to the unavailing efforts of the Secretary of War, the present Governor-General and the Chinese community to have Act No. 2972 repealed, so counsel for the petitioners intimates, its enforcement was suspended until the adjournment of the Legislature in February, 1923." (*Decision of the Philippine Supreme Court, at p. 1160, Transcript of Record.*)

11. That out of the 85,000 merchants of all nationalities in the Philippines to whom Act No. 2972 applies, between 10,000 and 12,000 are Chinese, whose aggregate commercial business represents about sixty per cent of the total business done by all the merchants in the Philippine Islands, and that at least two-thirds of the Chinese businessmen can easily comply with the law. (*Ibid. p. 1170, Transcript of Record, and Young* v. *Rafferty, supra, p. 560.*)

12. That from a canvass made some time prior to June 30, 1923, by supervising agents of the Bureau of Internal Revenue of Chinese merchants keeping dif-

ferent kinds of account books all over the Philippine Islands, there appears that: (*a*) Twenty-six per cent of said Chinese merchants were keeping only the sales books required by said bureau; (*b*) sixty-four per cent were keeping Chinese account books besides Bureau of Internal Revenue books; and (*c*) ten per cent were keeping only Chinese books. (*Exhibit 2, p. 1015, Transcript of Record.*)

13. That the petitioners and the 12,000 or more other Chinese for whose benefit this action has been instituted are now, and for *many years* last past have been, domiciled in the Philippine Islands and engaged in business as merchants in said Islands. (*Amended petition, p. 37; testimony of Collector Posadas, p. 747, Transcript of Record.*)

14. That said Chinese merchants transact business with natives and foreigners in English, Spanish, or local dialects, prepare their contracts, invoices, and general commercial correspondence in English, Spanish, or Chinese, and are practically keeping the sales books required by the Bureau of Internal Revenue. (*Testimony of Yu Cong Eng, Sy Seng Tong, Co Liam, and twenty-nine other Chinese witnesses, pp. 145-498, Transcript of Record.*)

15. That the use of languages other than those mentioned in Act No. 2972 results in heavy losses of Government revenue amounting to several million pesos every year. (*Testimony of Collector Posadas; Exhibit 3, p. 1017; and Exhibit 31 at p. 1070, Transcript of Record.*)

SUMMARY OF ARGUMENT

I

1. A business, by circumstances and its nature, may raise from private to be of public concern and be subject, in consequence, to governmental regulation. (German Alliance Ins. Co. v. Kansas, 233 U. S. 389, 411.)

2. Books of account are the only means the Government has to assess taxes on merchants. Books of account should therefore, be considered as public records. The Government, for the purpose of revenue, is entitled, as of right, to take charge of private business of *any* character, exercise control over it, and regulate the entire business. Thus, speaking of a distillery, the Government has a right to examine its books, and establish either the verity or want of verity of these books; and for governmental purposes *every book which a distiller keeps is to a certain extent a Government book.* (U. S. v. Mason *et al.*, 26 Fed. 1189.)
3. Bookkeeping is affected by a public interest, since it is through the books of accounts that taxation is collected. Such books and the keeping thereof are, therefore, clothed with a public interest and, as such, can lawfully be regulated and interfered with by the Government under its sovereign power. (German Alliance Ins. Co. v. Kansas, *supra;* Clark v. Nash, 198 U. S. 361; Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527; Noble State Bank v. Haskell, 219 U. S. 104; Pierce Oil Corp. v. Hope, 248 U. S. 498; La Tourette v. McMaster, 248 U. S. 465; Block v. Hirsh, 256 U. S. 135; Arts. 33, 34, 35, 36, 37, 49, Code of Commerce of 1888, and explanatory notes thereto by Spanish Minister Sr. Alonso Martinez.)
4. The keeping of books of account in the official language of the Government has, long before the enactment of Act No. 2972 of the Philippine Legislature, been recognized by the Spanish legal tradition as well as by existing legislations of many civilized countries. (Ley 12, tít. 4.°, Lib. IX, Novísima Recopilación; Ley 13, tít. 4.°, Lib. IX, *ibid;* Argentine Code of Commerce, art. 66; Code of Commerce of Bolivia, art. 42; Chile Alcohol Law, art. 32; Columbia Code of Commerce, art. 32; Ecuador Code of Commerce, art. 35; Guatemala Code of Commerce, art. 21; Honduras Code of Commerce, art. 26; Mexico Code of Commerce, art. 37; Salvador Code of Commerce, art. 19; Uruguay Code of Commerce, art. 44; Venezuela Code of Commerce, art. 35; Decree of the Revol. Gov. of France, 2 prair., Year II; L. 24 prair. Year XI; Code of Commerce of Servia, art. 11.)

5. The carrying and keeping of books of acount in Spanish being virtually required by the Code of Commerce in force in the Philippine Islands, Act No. 2972 of the Philippine Legislature which requires that such books be kept in English and native languages together with the Spanish is but an implied amendment to said Code of Commerce. And since the Code of Commerce was tacitly approved and sanctioned by the Congress of the United States (Act of July 1, 1902, Sec. 86, 32 Stat. 691, 712), any taint of unconstitutionality in said Act No. 2972 must necessarily be wiped out. (Public Utility Commisioners v. Ynchausti & Co., 251 U. S. 401.)
6. Act No. 2972 of the Philippine Legislature does not work hardship upon, nor deny Chinese the equal protection of the law, nor the right to use their own language in private commerce. Neither it is a class legislation. It is a proven fact that out of 12,000 Chinese merchants in the Philippines only some 4,000 are unable to keep their books of account in either English, Spanish, or native dialect. And not all of the 4,000 Chinese merchants are required to keep books of account. There is no provision in Act No. 2972 prohibiting the use of foreign languages in private business. Furthermore Act No. 2972 of the Philippine Legislature did not choose among various languages spoken the world over the English and Spanish languages and the Philippine dialects, but simply adopted these languages for a fiscal measure since they are the official languages. Japanese, Hindus, Syrians, Greeks, French, and hundreds of foreign merchants are likewise affected by the Act. So Act No. 2972 cannot be termed a class legislation. (Barbier v. Connolly, 113 U. S. 27, 32; Middleton v. Texas Power and Light Co., 249 U. S. 152; R. Moore & Co. v. North Dakota, 240 U. S. 510; Dominion Hotel [illegible] nm, 249 U. S. 265.)
7. Cases cited in the brief in support of [illegible] writ of certiorari are not applica[illegible] the reasons stated in the brief.
8. Act No. 2972 is a valid exercise of the [illegible] taxing powers. The Philippine Government is vested with full power to legislate according to its conception of public

PAGE

I.

Act No. 2972 is void as being on its face contrary to the prohibitions of the Philippine Bill of Rights and the Fifth Amendment to the Federal Constitution. It punishes in the petitioners and others similarly situated what is permitted to others as lawful without any distinction of circumstances, to wit, the use of their native tongue in a necessary incident of a legitimate occupation. This is an unjust and illegal discrimination which is made inevitable by this Act 80

II.

The Act is also void because it denies to petitioners and others similarly situated the rights, privileges and immunities secured to them by the treaties between the United States and China which secure to Chinese nationals "most favored nation" treatment ... 97

III.

This Court has jurisdiction to determine the validity of the Act untrammeled by the construction thereof adopted by the Philippine Court. That construction is clearly erroneous. It is completely at variance with the plain import of the language of the Act 99

Conclusion 104

TABLE OF CITATIONS.

	PAGE
Act to Amend Judicial Code, Sec. 7, approved Feb. 13, 1925	99
Act No. 2972 of Philippine Legislature	6
Adams *v.* Tanner, 244 U. S. 590	85, 88
A. T. & S. F. Ry. *v.* Vosburg, 238 U. S. 56	90
Bailey *v.* Alabama, 219 U. S. 219	94, 95
Buchanan *v.* Warley, 245 U. S. 60	92
Burns Baking Co. *v.* Bryan, 264 U. S. 504	91
Ci Ah Chong, 2 Fed. 736	94
Coppage *v.* Kansas, 236 U. S. 1	88, 91
Diaz *v.* U. S., 223 U. S. 442, 455	81
Guinn *v.* United States, 238 U. S. 347	94, 95
Henderson *v.* Mayor, 92 U. S. 268	94
Hill Military Academy *et al. v.* Pierce *et al.*, decided June 1, 1925, ... U. S...	85
Home Tel & Tel. Co. *v.* City of Los Angeles, 227 U. S. 278	92
In re Henshaw, 147 Cal. 649	92
In re Jacobs, 98 N. Y. 98	92
In re Lee Sing, 43 F. 359	92
Kepner *v.* U. S., 195 U. S. 100, 124	81
Meyer *v.* Nebraska, 262 U. S. 390	81, 83
Mugler *v.* Kansas, 123 U. S. 623, 661	94
Pennsylvania Coal Co. *v.* Mahon, 260 U. S. 393	92, 94, 95
Philippine Autonomy Act, Sec. 3, 1918, Supp. Fed. Stat., Anot., p. 593	81
Philippine Autonomy Act, Sec. 27, 1918 Supp. Fed. Stat. Anot. p. 605	99

PAGE

Philippine Sugar etc. Co. *v.* Philippine Islands, 247 U. S. 385, 390 99
Quong Wing *v.* Kirkendall, 223 U. S. 59.. 96
The King *v.* Liau Kiu, 7 Haw. Rep. 81
Treaties of U. S., Malloy, Vol. I, p. 243.. 98
Truax *v.* Corrigan, 257 U. S. 312 92
Truax *v.* Raich, 239 U. S. 33 ..... 85, 93
Yick Wo *v.* Hopkins, 118 U. S. 356 ....93, 98, 100
Young *v.* Rafferty, 33 Phil. Reports 556 .. 102

1

IN THE

Supreme Court of the United States

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

2

vs.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA as Fiscal for the City of Manila and PEDRO CONCEPCION as Judge of the Court of First Instance of Manila,

Respondents.

3

Notice.

Notice is hereby given that upon their petition verified the 24th day of June, 1925, the certified transcript of the record in the Supreme Court of the Philippine Islands in the case entitled Yu Cong Eng *et al.* Petitioners, v. W. Trinidad, etc., *et al.*, Respondents, including all proceedings

4 therein in said Court, the above named petitioners will submit a motion together with said petition and their brief in support thereof, copies of which are hereupon served upon you, to the Supreme Court of the United States in its Court Room at the Capitol in the City of Washington in the District of Columbia on October 5th, 1925, at the opening of Court on that day, or as soon thereafter as counsel can be heard.

Dated, June 26th, 1925.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
FREDERIC R. COUDERT, JR.,
Counsel for Petitioners.

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The foregoing notice is hereby accepted, and service of a copy thereof, and of the motion, petition and brief therein mentioned, is hereby acknowledged this ..... day of July, 1925.

....., Counsel for Respondents.

6

Motion For Leave to File Petition For Writ of Certiorari.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,
Petitioners,

vs.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA as Fiscal for the City of Manila and PEDRO CONCEPCION as Judge of the Court of First Instance of Manila,
Respondents.

Now come the petitioners Yu Cong Eng and Co Liam, by Frederic R. Coudert, Allison D. Gibbs and Frederic R. Coudert, Jr., their counsel, and move for leave to file the petition hereto annexed for a writ of certiorari, and further move for a rule to be entered and issued directing the Supreme Court of the Philippine Islands and all the judges and officers of said court to show

10

cause why a writ of certiorari should not issue, and why said petitioners should not have such other and further relief or both in the premises as may be just.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
FREDERIC R. COUDERT, JR.
Counsel for Petitioners.

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Petition for Writ of Certiorari to the Supreme Court of the Philippine Islands.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1925.

YU CONG ENG AND CO. LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

vs.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA as Fiscal for the City of Manila and PEDRO CONCEPCION as Judge of the Court of First Instance of Manila,

Respondents.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Yu Cong Eng and Co Liam, by their counsel, respectfully shows as follows:

1.—That your petitioners are Chinese nationals legally within United States territory, of age and residents of the City of Manila, where

16 they are engaged in commercial business (Rec., pp. 1-10; 33-35).

II.—That the respondent W. Trinidad is the duly appointed, qualified, and Acting Collector of Internal Revenue of the Philippine Islands, with his office and residence in the City of Manila (Rec., pp. 829-833).

III.—That the respondent, Eulogio P. Revilla, is the duly appointed, qualified, and Acting Fiscal or prosecuting attorney of the City of Manila
17 and a resident of the said city.

IV.—That the Honorable Pedro Concepcion is one of the duly appointed, qualified and acting judges of the Court of First Instance of the City of Manila, and also a resident of said city.

V.—That on the 21st day of February, 1921, the Philippine Legislature enacted and approved Act No. 2972 in the following language:

"No. 2972. "AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND
18 TO ESTABLISH PENALTIES FOR ITS VIOLATION.

"*Be it enacted by the Senate and House of Representatives of the Philippines in legislature assembled and by the authority of the same*:

"SECTION 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

"SECTION 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.

"SECTION 3. This Act shall take effect on November first, Nineteen hundred and twenty-one.

"Approved, February 21, 1921."

VI.—That the petitioner, Yu Cong Eng, is a Chinese merchant engaged in the lumber business at No. 696 Juan Luna, Manila; that he neither reads, writes, nor understands the English or Spanish language or any local dialect; that he keeps the books of account of his business in Chinese characters; that by reason of his ignorance of the English and Spanish languages and of all local dialects he is unable to keep his books in any language other than his own; that even if he should employ a bookkeeper capable of keeping his books in the English or Spanish language, or in any local dialect, he would have no means of personally revising or ascertaining the contents or correctness of the books thus kept; that the employment of such a bookkeeper, unless he should also be a linguist, would entail as a necessary consequence the employment of a translator or interpreter familiar with the Chinese language and the language or dialect in which such books might be kept in order to enable the petitioner, Yu Cong Eng, to ascertain by hearsay the contents thereof; that in the event of being compelled to employ such a bookkeeper and translator or interpreter, the petitioner, Yu Cong Eng, would then be com-

22 pletely at the mercy of such employees who might not only cheat and defraud him of the proceeds of his business, but involve him in civil or criminal liability in the conduct of his business; that under the provisions of said Act No. 2972 the petitioner, Yu Cong Eng, is prohibited from even keeping a duplicate set of accounts in his own language and would, in the event of the enforcement of said law, be compelled to remain in total ignorance of the status of his business; that for the reasons stated the enforcement of said Act would drive the peti-
23 tioner, Yu Cong Eng, out of business as well as the many other Chinese merchants in the Philippines, who are in like circumstances. (Rec., pp. 1-10 etc.).

VII.—That the petitioner, Co Liam, is a Chinaman and conducts a small general merchandise business, commonly known in the Philippines as a Chinese *tienda* at No. 364, Calle Santo Cristo, Manila; that he carries a stock of goods of about P10,000; that his sales taxes amount to from P40 to P60 per quarter; that he neither
24 reads, writes nor understands the English or Spanish language, or any local dialect; that he keeps the books of account of his small business in Chinese (which is the only language known to him) without the assistance of a bookkeeper; that he has been losing money for some time in the operation of his business, but that even in the most prosperous times the profits of his small business could never be sufficient to justify the employment of a Filipino bookkeeper or a bookkeeper of any other nationality capable of keep-

ing his books in English, Spanish or any local dialect; that even if he could afford to employ such a bookkeeper, he would have no means of personally revising or ascertaining the contents or correctness of the books thus kept; that the employment of such a bookkeeper, unless he should also be a linguist, would entail, as a necessary consequence, the employment of a translator or interpreter, familiar with the Chinese language, and the language or dialect in which such books might be kept, in order to enable the petitioner, Co Liam, to ascertain by hearsay the contents thereof; that in the event of being compelled to employ such a bookkeeper and translator or interpreter, the petitioner, Co Liam, would then be completely at the mercy of such employees, who might not only cheat and defraud him of the proceeds of his business but involve him in civil or criminal liability in the conduct of his business; that under the provisions of said Act No. 2972 the petitioner, Co Liam, is prohibited from even keeping a duplicate set of books or accounts in his own language, and would, in the event of the enforcement of said law, be compelled to remain in total ignorance of the status of his business; that for the reasons stated the enforcement of said Act would drive the petitioner and many other Chinese merchants or *tienda* keepers in the Philippines who are in like circumstances out of business. (Rec., pp. 33-35, etc.).

VIII.—That the respondent, Collector of Internal Revenue, in his capacity as such on the 2nd day of March, 1923, inspected and seized

the account books of the petitioner, Yu Cong Eng, which are in the Chinese language, informed the respondent City Fiscal of the failure of the petitioner, Yu Cong Eng, to keep his said account books in the English or Spanish language, or in any native dialect, and wrongfully and unlawfully recommended the prosecution of the petitioner, Yu Cong Eng, for the violation of said Act No. 2972; that as a result of said information and recommendation, the respondent City Fiscal wrongfully and unlawfully drafted, signed, and filed a criminal complaint before the respondent, the Honorable Pedro Concepcion, as Judge of the Court of First Instance of the City of Manila, against the petitioner, Yu Cong Eng, charging him with the violation of said Act No. 2972, a copy of which criminal complaint marked Exhibit "A" for identification is attached hereto and made a part of this petition; that as a result of the filing of said criminal complaint, the respondent Honorable Pedro Concepcion, as Judge of said Court of First Instance of the City of Manila, wrongfully and unlawfully issued a warrant for the arrest of the petitioner, Yu Cong Eng, and caused him to be arrested thereunder.

IX.—That the said respondent Collector of Internal Revenue, said Fiscal of Manila, and the said respondent Judge of the Court of First Instance, threaten to and will unless restrained and prohibited by this Honorable Court, cause all of the other said Chinese merchants to be arrested, prosecuted and convicted under said Act No. 2972, as shown by a letter from the said

respondent Collector of Internal Revenue to the 31
said respondent Fiscal of Manila, published in the *Daily Bulletin* of March 2, 1923, a copy of which publication marked Exhibit "B" is attached hereto and made a part of this petition.

X.—*That there are approximately* 12,000 *other Chinese merchants in the Philippine Islands similarly situated and who are and will be similarly affected by said Act No.* 2972, *and therefore the subject matter of the present suit is of common and general interest to all the other Chinese merchants similarly situated; that by reason of their* 32
great number it was impracticable to bring them all before the Court, and that therefore petitioners brought this action for the benefit of themselves and of all other Chinese merchants similarly situated and affected as aforesaid. (Rec. p. 7 of Exh. C).

XI.—That of all nationalities there are altogether about 85,000 merchants in the Philippine Islands; that of this number about 71,000 are Filipinos; that of the remaining 14,000 about 1,500 are of either American, Spanish, or British
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nationality, and of the remaining 12,500 approximately 12,000 are Chinese; that the aggregate business transacted by the said 12,000 Chinese merchants represents more than 60 per cent of the total business done by all the merchants in the Philippine Islands; that for the reasons stated the burden of said Act No. 2972 is imposed almost exclusively upon said 12,000 Chinese merchants, including your petitioners (Rec., p. 7 of Exh. C).

XII.—That not to exceed 1 per cent. of the Chinese merchants in the Philippine Island understand English, Spanish or any local dialect sufficiently well to be able to keep or revise their own books of account in any of those languages, and not to exceed 1 per cent. of said merchants have even a working knowledge of any of said languages such as would enable them to in any manner inform themselves as to the status of books of account kept in said languages, except by means of translators or interpreters; that the profits of the business of more than one-half of said Chinese are so small that they would be unable to afford the employment of foreign bookkeepers or of translators or interpreters familiar with their own language and with that in which their books of account might be kept; that for the reasons stated the enforcement of said Act would drive the great majority of the said Chinese merchants out of business, and would cause great and irreparable damage to the business of the remainder. (Rec., pp. 271, 273; 356-357).

XIII.—That there are no considerable number of unemployed competent bookkeepers available in the Philippines capable of keeping books of account in English, Spanish or any local dialect to fill the positions which would be created by the enforcement of Act No. 2972, even supposing that the Chinese merchants would be able to employ them. (Rec., p. 274).

XIV.—That the said 12,000 Chinese merchants as shown by the records of the Internal

Revenue Department, presided over by the respondent, W. Trinidad, now pay and for many years last past have been paying more than 60 per cent. of the taxes levied on the total mercantile transactions of the Philippine Islands, thereby conclusively demonstrating that the said Chinese merchants faithfully and honestly record their business transactions in their own language, and that the respondent, Collector of Internal Revenue, and his agents and inspectors are, and have, at all times, been able to fully inform themselves from the books of said Chinese merchants thus kept in their own language, of all the business transacted by them; that the Chinese written language is a scientific language employed by the Chinese, Japanese and Koreans, who constitute more than one-fourth of the entire population of the world. That there are in the Philippine Islands available for employment by the Bureau of Internal Revenue enough Chinese accountants to make such inspections of the books of account of Chinese merchants as may be necessary to insure true declarations of their sales and income. That there are 43 native languages divided into 87 local dialects in the Philippine Islands, most of which are unscientific and crude in character. For the reasons stated said Act No. 2972 is a wholly unreasonable and unnecessary burden upon the said Chinese merchants. (Rec., p. 279; Exh. F of Rec.).

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XV.—That said Act No. 2972 is unjust and without precedent in the United States or in any other country where the Chinese merchant is doing business, as shown by the resolutions

adopted and signed by the principal business houses in the City of Manila, the American Chamber of Commerce of China; the American Chamber of Commerce of Tientsin; the Executive Committee of the Foreign Trade Bureau of the Seattle Chamber of Commerce; the Seattle Chamber of Commerce and Commercial Club; the Portland Chamber of Commerce; the Foreign Trade Committee of the San Francisco Chamber of Commerce, and the Merchants' Association of New York, copies of which are respectively marked Exhibits "C," "D," "E," "F," "G," "H," "I," and "J" and attached hereto as a part of this petition.

That the enactment of said Act No. 2972 has caused a vigorous protest on the part of the Chinese foreign office to the United States Minister to China and has caused and is causing prejudice to the good understanding and friendly relations between the Chinese and United States governments, as shown by a cable from United States Minister Crane from Peking to the Secretary of State at Washington, dated April 28, 1921; that the Secretary of War and Chief of the Bureau of Insular Affairs urged the repeal of the Act, as appears from a letter and cable from Chief of the Bureau of Insular Affairs at Washington, to Governor General of the Philippine Islands, copies of which marked Exhibits "M," "N" and "O," respectively, are hereto attached and made a part hereof (Rec., p. 279 etc.).

XVI.—On September 15, 1923, petitioners submitted to the Supreme Court of the Philippine Islands a petition for prohibition praying *inter*

alia for judgment (a) declaring the unconsti- 43
tutionality of Act No. 2972 and (b) granting an order against respondents to absolutely desist and refrain from further action in said criminal case against the petitioner Yu Cong Eng and from instituting or prosecuting any other criminal action under said Act No. 2972; (c) and petitioners further prayed for a preliminary injunction.

The Supreme Court of the Philippine Islands issued a preliminary injunction but on February 6, 1925, rendered a decision, two judges dissenting, sustaining the Act and dismissing the 44
petition for prohibition.

The decision of the Court below was predicated upon a fanciful construction of the Act which amounted to the crudest sort of judicial legislation. The opinion of the Court (copy annexed hereto as Exhibit K) at the outset concedes in effect that if the Act really means what it says, it must be declared unconstitutional. It then attempts by an annihilating distortion of the plain and simple language of the Act to work out a less objectionable law.

The Court discovered that the express prohi- 45
bition of the Act meant only that if certain unascertained revenue books were kept in the designated languages, then other books could be kept in any languages.

That the construction placed upon said law by the Court below in order to avoid its palpable unconstitutionality is entirely fanciful and contrary to the plain import of the language used, and is in effect a re-drafting of the law.

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Two judges dissented on the ground that the Act was unconstitutional. (Copies dissenting opinion are annexed as Exhibit L.)

XVII.—Your petitioners are informed and believe that Act No. 2972 is null and void under the Constitution and treaties of the United States and the Philippine Bill of Rights.

That the law as redrawn by the lower Court remains void for uncertainty as it does not specify which books of account are to be kept in the specified languages.

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XVIII.—That in instituting, entertaining, and proceeding with the prosecution of said criminal action against the petitioner, Yu Cong Eng, and in otherwise enforcing and threatening to enforce said Act No. 2972, as hereinbefore set forth, said respondents are acting without and in excess of their jurisdiction; that the enforcement of said Act No. 2972 will cause multitudinous and persecuting criminal prosecutions, and the prosecution of said criminal action against the petitioner, Yu Cong Eng, and the threatened institution and prosecutions of similar criminal ac-

48

tions against your petitioner, Co Liam, and other Chinese merchants of the Philippine Islands is causing, and will, unless restrained and prohibited by this Honorable Court, continue to cause your petitioners, and all of the other Chinese merchants of the Philippine Islands, great and irreparable disturbance and injury in their business and property rights and interests, and for which they have no other plain, speedy and adequate remedy in the ordinary

courts of law by bill of exceptions, appeal, or *otherwise*. 49

XIX.—That the right of the petitioner, Yu Cong Eng, to defend and appeal if convicted in the said criminal action already filed against him, or in any succeeding similar criminal action which may be instituted against him, and the right of the petitioner, Co Liam, and of each and all of the other Chinese merchants of the Philippines to defend, and, in the event of conviction, to appeal to the Supreme Court, is an entirely inadequate remedy for the reason that 50 similar prosecutions are threatened and may and will be instituted for each new entry or daily or weekly transaction recorded in their books of account in the Chinese language, and the threats and fear of repeated prosecutions and of the imposition of the severe punishment prescribed for the violation of said Act No. 2972, would and will compel your petitioners and many others of said Chinese merchants to discontinue business or to comply with the provisions of said law to their great and irreparable injury.

XX.—That the petitioners *and the twelve thousand or more other Chinese for whose benefit this action is prosecuted are now, and for many years last past have been, domiciled in the Philippine Islands and engaged in business as merchants in said Islands;* that as such merchants, they are entitled under the treaties now in force between the United States and China to all the rights, privileges and immunities enjoyed in the Philippine Islands by the citizens 51

52 and subjects of the 'most favored nation'; that under said treaties the petitioners and said other Chinese are entitled to the same rights, privileges and immunities as the citizens and subjects of Great Britain and Spain; that said treaties have the same force and effect in these Islands as do the laws of the Congress of the United States; that said Act No. 2972 is in violation of said treaties in that it deprives the petitioners and said other Chinese merchants of their liberty and property, whereas it imposes no burden whatever upon the citizens and sub-
53 jects of Great Britain, Spain, and Latin American countries.

Your petitioners will present, in support of this petition, a brief discussing fully the contentions above stated with citation of authorities.

Wherefore your petitioners pray that this Honorable Court will cause a writ of certiorari to be issued requiring the Supreme Court of the Philippine Islands to certify the record and proceedings therein so that this Court may act thereon as of right and according to law ought to be done.

54 And your petitioners will ever pray.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
FREDERIC R. COUDERT, JR.,
Counsel for Petitioners.

55

STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.:

FREDERIC R. COUDERT, being duly sworn, deposes and says, that he is one of the counsel for the petitioners herein; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief; that the reason why this verification is not made by petitioners is that petitioners are not within the continental United States, and deponent is one of their counsel and is familiar with the facts stated in the petition.

56

I hereby certify that I have examined the foregoing petition and that in my opinion the same is well founded and is entitled to the favorable consideration of this Court.

FREDERIC R. COUDERT.

Sworn to before me this 24th day of June, 1925.

CHAS. A. CONLON,
(SEAL) Notary Public #204,
New York County.

57

58

Exhibit "A."

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE COURT OF FIRST INSTANCE
OF MANILA.

59	THE PEOPLE OF THE PHILIPPINE ISLANDS, Complainant, vs. YU CONG ENG, Accused.	COMPLAINT. Violating of the Accounting Law. Cause No. 25551.

The undersigned accuses Yu Cong Eng of the violation of Act No. 2972 of the Philippine Legislature, committed as follows:

60 That on or about and during the time included between the 1st of January and the 27th of February, 1923, both dates included, the said accused was engaged in commerce for the purpose of profit in the City of Manila, Philippine Islands, having for this purpose an establishment at No. 696 Calle Juan Luna, district of Binondo of said city and in the exercise and development of his business the said accused, wilfully, illegally, criminally and fraudulently kept and caused to be kept the books of account of his said business

corresponding to said period of time, solely in Chinese instead of keeping them or causing them to be kept in English, Spanish or any local dialect, thereby hindering and obstructing the authorized agents and representatives of the Government of the Philippine Islands and of the City of Manila in the examination and revision of the said books of account and obstructing in this manner the ascertainment and determination of the entire amount which said accused, owed, owes or shall owe for licenses, permits, taxes and contributions. 61

In violation of the law. 62

ALFONSO FELIX,
Assistant Fiscal.

Subscribed and sworn to before me this 7th day of March, 1923, in the City of Manila, Philippine Islands, by Alfonso Felix, Assistant Fiscal of the City of Manila.

(Sgd.) PEDRO CONCEPCION,
Judge of the Court of First Instance.

A preliminary investigation has been made in this case under my direction and witnesses examined under oath in accordance with the provisions of Sec. 2465 of Act No. 2711 of the Philippine Legislature. 63

ALFONSO FELIX,
Assistant Fiscal.

64

Exhibit "B."

MANILA DAILY BULLETIN.

Manila, P. I., Friday, March 2, 1923.

"I have the honor to inform you that Yu Cong Eng, a Chinese merchant doing business at 696 Juan Luna, Manila, has violated the provisions of section 1 of Act No. 2972 of the Philippine Legislature which went into effect on January 1 of the present calendar year, penalized under section 2 of the same Act, by keeping his books
65 of account from January 1, to February 27, 1923, in Chinese and not in English, Spanish, or any native dialect as required by law."

In the letter quoted above Collector of Internal Revenue Trinidad recommends the first prosecution under the bookkeeping law, but it is understood that more such recommendations will follow wherever it is found that the law is being violated.

The Collector stated yesterday that the Yu Cong Eng case is not asked to be filed as a test case, to determine the constitutionality of the law; he said that every violation encountered will
66 be dealt with similarly.

Exhibit "C."

RESOLUTION.

WHEREAS, the undersigned merchants, doing business in the Philippine Islands, consider that a certain law recently passed by the Legislature of the Philippine Islands and approved by ex-Governor-General Harrison, known as Act No. 2972, and which makes it illegal after a certain date therein mentioned for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in a language other than English, Spanish, or a native dialect, and providing heavy penalties for violations thereof, is very prejudicial to the Chinese community; and

WHEREAS, the business and commerce of the Philippine Islands are largely conducted by Chinese merchants, and a law like the one under consideration, which, if the practicability of its enforcement be assumed, would necessitate the Chinese giving up their business establishments, would vitally affect the economic situation of trade in the Islands and react in an important way most unfavorably upon all merchants and business of every kind in the country, and the undersigned accordingly conceive that they have a proper and direct interest, aside from other considerations, in having said Act No. 2972 repealed; and

WHEREAS, the law will work unnecessary hardship on the Chinese merchants by putting them

70 to extra expense for the employment of bookkeepers using one of the aforesaid languages; and

Whereas, most of the Chinese merchants can neither speak, read, nor write any of the languages prescribed as aforesaid, and, consequently, would be unable to direct their bookkeepers or examine their books for themselves; and in view of the large number of Chinese merchants resident in the Philippine Islands and the relative scarcity of competent bookkeepers, particularly

71

Whereas the enforcement of the said law will interfere greatly with the business of the Chinese merchants in the Philippine Islands and will thus be contrary to the fundamental ideas of justice and fair play; and

72 Whereas the law is wholly unnecessary in nature, its enactment not having been heard of in any country than the Philippine Islands; and

Whereas the Islands are just passing through one of the most acute financial crises in their history, and the enforcement of such a law will augment the severity of the economic depression, on account of its detrimental effects on the local Chinese merchants; and

78 Standard Oil Co. of New York,
By J. Maddocks.
Wise & Co.,
R. E. Humphreys, Pres.
Lutz & Zwilling,
P. E. Zwilling, member of firm.
Penn Mut Mutual Benefit Building Ass'n,
F. Fenwick, Mgr.
W. H. Anderson & Co.,
W. H. Reynolds, Vice-Pres.
Chestnut Lumber Co.,
[illegible] Quackenbush, Asst. Mgr.
44 [illegible]
[illegible]
[illegible]
[

79

Babcock & Templeton, Inc.,
W. R. Babcock.
Asia Banking Corporation,
W. J. Bolden, Mgr.
Wm. Shaw Palace,
T. G. Henderson, Mgr.
Benjamin Franklin Car Co.,
E. A. Asch, Pres. and Mgr.
The Admiral Line (Pacific Steamship Co.),
J. E. Armstrong.
ling Co., Ltd.,
& Mgr.

80

Treas.
Inc.,
sident.
nc.,
sident.

Machy. Co.,

81

.,

de San Miguel (San

n. Mgr.

.,

82 Union Ins. Soc. of Canton, Ltd.,
Toyo Kisen Kaisha,
C. L. Goodrich.
China, Japan & S. A. Trading Co.,
A. S. Cuttridge, Mrg.
J. R. Redfern & Co., Ltd.,
C. C. Hunter, Vice-President.
For London & Scottish Assn. Corp., Ltd.,
G. C. Hunter, Agent.
The McCullough Printing Co.,
F. H. Stevens, Pres.
The Auto Supply Co.,
83 W. W. Weston, Mgr.
Denniston, Inc.,
J. C. West, Asst. Mgr.
For the International Banking Corp.,
S. Williams, Mgr.
Hanson & Orth.
Willitts & Patterson, Ltd.,
G. C. Arnold, Pres.
Philippine-American Drug Co.,
(Successors to Botica Boie Co.)
Roy H. Springer,
pp. Levy Hermanos,
84 Leon Dreyfus.
Philippine Education Co., Inc.,
H. J. Hazelton, Secy.-Treas.
Camera Supply Co.,
J. C. Cottinger,
Colorado Mining Co.,
H. B. McCoy.
The Robert Dollar Company,
Victor C. Hall.
Pacific Mail S. S. Co.,
E. J. Brown, Acting Agent.

Walter E. Olsen & Co., 85
L. McCall, Vice-Pres.
C. M. Cotterman & Co., Inc.,
C. M. Cotterman, Pres.
W. Solomon.
The Globe Drug Store,
P. W. Ruston,
B. E. Green.
C. Alkan, Inc.,
P. Sintzenich.
Englebert & Munoz,
Jose Munoz y Lopez.
Clark & Co., 86
G. T. Merrman, Sec.-Treas.
The Cooper Company,
I. B. Findlay, Asst. Gen. Mgr.
Yangco, Rosenstock & Co., Inc.,
C. W. Rosenstock, V. P. & G. M.
Manila Tire & Rubber Co.,
D. M. Burchfield, Mgr.
Milton E. Springer Co.,
Milton E. Springer, Pres.
Los Angeles Pacific Nav. Co.,
J. R. Wilson, Gen. Agent.
J. R. Wilson, Inc., 87
By J. R. Wilson.
Frank & Co., Inc.,
G. Frank.
Internationl Com. Co.,
H. H. Buck.
Flecha Point Lumber Co.,
G. E. Carpender, Pres.
Muller, Maclean & Co., Inc.,
H. H. Sage, Agent.
General Supply Co.,
S. Thomas, Gen. Mgr.

88 Muller & Phipps (Manila), Ltd.,
John Meyer, Mgr.
Welch, Fairchild & Co., Ltd.,
G. G. Gordon.
Manila Commercial Co.,
By Antonio Gimenez, Manager.
Frank Waterhouse & Company,
A. G. Henderson, Local Manager.
La Insular, Loan Office and Jewelry Store,
Juan Javier, S. and C.
Juan Javier, Manager.
Commercial Pacific Cable Co.,
89 P. J. Harwood, Superintendent.
Laing & Wright,
F. C. Laing.
Atkins, Kroll & Co.,
J. G. Jefferys, Manager.
Alhambra Cigar and Cigarette Mfg. Co.,
Geo. Bordfeldt & Co.,
Fred. E. Krieghoff, Accountant.
The St. Louis D. G. Stores,
A. Ortiz, Vice-Pres.
Singer Sewing Machine Co.,
G. E. Brewster.
90 Norton & Harrison Co.,
F. C. Hagedorn, Vice-Pres.
Christenson, Hanify & Weatherwax,
C. P. Ladd.
American Express Co.,
W. D. Inman.
Clarke & Larkin,
W. W. Larkin.
Philippine Refining Corporation,
Fred. A. Leas, Manager.
The Caswell Import Co., Inc.,
T. Ebsen, Manager.

M. J. Ossorio. 91
The Eastern Extension, Australasia and China
Telegraph Company, Limited.
F. A. Betts, Superintendent.
The Bank of the Philippine Islands,
Juan de Ormaechea, Vice-President.
For the Yokohama Specie Bank, Ltd.,
T. Kasuya, Manager.
The Koster Company,
By W. N. Chatfield.
Cooperative Agricola de Filipinas,
Jose Ventura, Manager.
P. P. Neuss, Hesslein & Co., 92
A. G. Kenff.
Electrical Supply Co., Inc.
Montgomery Ward & Co., 75 Escolta,
By J. F. Quinn.
Luis Xiques,
Luis Xiques.
Monarch Trading Company, Inc.,
By J. E. Harris, Jr., Pres.
John Rothschild & Co.,
G. P. Sorensen, Resident Mgr.
Por El Meridian,
J. B. Lammoglia.
Purkis & Herber, 93
By G. G. Purkis.
Levy & Blumm, Inc.,
Angel P. Adia, Secretary.
J. P. Heilbronn Co.,
By Ames. G. Bellis, Treas.
Ohta Development Co.,
By C. Hawagara, Mgr.
Gibson Furniture Company, Inc.,
W. F. Daland, Pres. & Treas.

94

The Island Trading Co., Inc.,
By M. Goldenberg, Manager.
S. E. Diaz & Company, Inc.,
S. E. Diaz, Pres. & Gen'l Mgr.
Garcia Bosque, Pomar & Cia.,
Successors de la Vda. de E. Bota,
C. Garcia Bosque.
Martin Vaguedes, of Cranston Engineering Co.
Thurlow & Company, Inc.,
By R. W. Thurlow.
Lime Kilns, Inc.,
95 By W. C. Taylor.
Rubio Bros.,
By Jose Rubio.
Harry E. Keller Electric Co., Inc.,
Por Harry E. Keller, Pres.
Brias Roxas, Inc.,
M. Brias, Asst. Mgr.
E. Viegelmann & Co., Inc.,
By Wilhelm Jarck, Vice-Pres.

96

97

Exhibit "D."

RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE, AMERICAN CHAMBER OF COMMERCE, APRIL 12, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal, after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands, to keep their books of account in languages other than English, Spanish, or a Philippine dialect, 98
and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of merchandise throughout the Islands; and

WHEREAS, many, and probably the greater part, of these industrious Chinese merchants would find it impracticable to conform to the regula- 99
tions of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be is unanimously

RESOLVED, That we, the American Chamber of Commerce of China, give our support to the attached protest of the Chinese General Chamber of Commerce, Shanghai, in the belief that the omission of the Chinese language from the above-mentioned law is an unfortunate over-

100 sight and that either this omission should be promptly remedied by amendment or the law repealed.

AMERICAN CHAMBER OF COMMERCE OF CHINA,

(Sgd.) W. H. CHAPMAN, Secretary.

Exhibit "E."

RESOLUTION PASSED BY THE AMERICAN CHAMBER OF COMMERCE AT TIENTSIN, CHINA, MAY 12,
101 1921.

WHEREAS the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of merchandise throughout the Islands; and

WHEREAS, many, and probably the greater part, of these industrious Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless
102 make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be is unanimously

RESOLVED, That we, the American Chamber of Commerce in Tientsin, give our support to the protest of the Chinese Chamber of Commerce of Tientsin, in the belief that the omission of the Chinese language from the above-mentioned law is an unfortunate oversight and that either this omission should be promptly remedied by an amendment or the law repealed.

Exhibit "F."

RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE OF THE FOREIGN TRADE BUREAU, SEATTLE CHAMBER OF COMMERCE ON MAY 18, 1921.

WHEREAS, the Legislature of the Phiippine Islands has passed a law, known as Act No. 2972, making it illegal after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in language other than English, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of American merchandise throughout the Philippines; and

WHEREAS, many, and probably the greater part, of these Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be it

RESOLVED, That the Executive Committee of the Foreign Trade Bureau of the Seattle Chamber of Commerce join in protest against Act No. 2972 of the Philippine Legislature, and request our Congressional delegation in Washington to use its influence on behalf of the interests of the

106 Chinese merchants in the Philippines to bring about the repeal of this law; be it also

RESOLVED, That copy of this resolution be forwarded to the Chamber of Commerce of the United States of America for whatever action it may deem necessary.

Exhibit "G."

107 RESOLUTIONS ADOPTED BY THE SEATTLE CHAMBER OF COMMERCE AND COMMERCIAL CLUB, MAY 23, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in language other than English, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

108 WHEREAS, the Chinese merchants of the Philippine Islands have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of American merchandise throughout the Philippines; and

WHEREAS, many, and probably the greater part, of these Chinese merchants would find it impracticable to conform to the regulations of the

above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; and

WHEREAS, said law appears to be an arbitrary and unfriendly act toward a friendly nation; therefore, be it

RESOLVED, That the Seattle Chamber of Commerce and Commercial Club request President Harding to cable General Wood and ask him to investigate and report on this matter, and also that copies of this resolution be forwarded to the Washington State delegation in Congress; and be it also

RESOLVED, That copy of this resolution be forwarded to the Chamber of Commerce of the United States of America, and to the Chambers of Commerce in Portland, San Francisco, and Los Angeles, for whatever action they may deem necessary.

112

Exhibit "H."

RESOLUTIONS ADOPTED BY THE FOREIGN TRADE DEPARTMENT OF THE PORTLAND CHAMBER OF COMMERCE AND APPROVED BY BOARD OF DIRECTORS OF THE PORTLAND CHAMBER OF COMMERCE, MAY 25, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as "An Act to define the language of keeping books of accounts and providing a penalty for the same" (No. 2972), which Act permits only the use of such
113 languages as English, Spanish, or native dialects and prohibits the use of the Chinese language; and

WHEREAS, the commerce of the Philippine Islands has been carried on and developed to a large extent for the last 400 years by the Chinese; and

WHEREAS, the greater portion of these Chinese merchants will find it impracticable to conform to the regulations of the above law and
114 probably force a majority of them to discontinue business; and

WHEREAS, this law appears to be an unfriendly act towards a friendly nation and would hinder rather than develop our commerce with other nations which we are so anxious to build up; therefore, be it

RESOLVED, That the Portland Chamber of Commerce call these matters to the attention of the President of the United States, and Congress,

requesting that an investigation of these conditions be made with a view to their alleviation; and be it further

RESOLVED, That copy of this resolution be forwarded to the Oregon delegation in Congress, the Chamber of Commerce of the United States of America, and the Chambers in the Far East.

BOARD OF DIRECTORS, PORTLAND CHAMBER OF COMMERCE,

By P. HETHERTON,
Executive Secretary.

Exhibit "I."

RESOLUTION ADOPTED BY THE FOREIGN TRADE DEPARTMENT OF THE SAN FRANCISCO CHAMBER OF COMMERCE, JUNE 14, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law known as Act No. 2972, making it illegal, after November 1, 1921, for any person, company, firm, or corporation, engaged in business in the Philippine Islands, to keep their books of account in any language other
119 than English, Spanish, or the Philippine dialects, and providing heavy penalties for violation of the law; and, further, that the Chinese merchants of the Philippines have to a very important degree been responsible for the growth and expansion of American business in the Philippine Islands, inasmuch as they have provided a very important organization for the distribution of American goods; and

WHEREAS, many of these Chinese business men would be forced, by this law, to abandon their business in the Philippines, representing prob-
120 ably some two hundred million dollars in invested capital; be it therefore

RESOLVED, That the Foreign Trade Committee of the San Francisco Chamber of Commerce give its support to protests of the Chinese merchants of the Philippine Islands against Act No. 2972 and further urge action by the proper officials of the United States Government towards repealing this law, or securing an amendment which will permit the Chinese merchants of the Philippines to continue their business on an equitable basis of competition.

Exhibit "J."

121

THE MERCHANT'S ASSOCIATION OF NEW YORK—PREAMBLES AND RESOLUTIONS ADOPTED JULY 6, 1921.

WHEREAS, the Legislature of the Philippine Islands has enacted a law, No. 2972, February, 1921, providing that after November 1, 1921, it will be illegal for any person, company, firm, or corporation, engaged in business, industry, or other activity for profit in the Philippine Islands to keep their books of account in a language 122
other than English, Spanish, or a native dialect, and that violators of this law will be punished by a fine or imprisonment, or both; and

WHEREAS, such a provision of law is, we believe, unparalleled, unjust, and unnecessary, other countries, including the United States, not having this or any other similar requirement; and

WHEREAS, a large part of the business of the Philippine Islands has for years been in the hands of Chinese merchants, these merchants at 123
present being reported to pay approximately 70 per cent of the business taxes of the country; and

WHEREAS, probably the greater part of these Chinese merchants find it impracticable to keep their books of account in any of the above-mentioned languages, which will therefore force them to withdraw from business in the Philippines; and

130

3. ID.; ID.; ID.:—As a general rule, the question of constitutionality must be raised in the lower court and that court must be given an opportunity to pass upon the question before it may be presented to the appellate court for resolution. (*Cadwalader-Gibson* v. *Del Rosario*, 1913, 26 Phil. 192). Occasionally under a recently enacted statute affecting numerous persons and extensive property rights liable to give rise to a multiplicity of suits and numerous prosecutions, it is proper, right at the threshold of a prosecution, to have the validity of a given law
131 determined in the interest of the accused and of the public, so as to permit of the orderly administration of justice. (*Young* v. *Rafferty*, 1916, 33 Phil. 536; *Kwong Sing* v. *City of Manila*, 1920, 41 Phil. 103; *Dimayuga and Fajardo* v. *Fernandez, et al.*, 1922, 43 Phil. 304.)

4. ID.; ID.; ID.:—Inasmuch as the property and personal rights of nearly twelve thousand merchants are affected by these proceedings, and inasmuch as Act No. 2972 is a new law not yet interpreted by the courts, in the interest of the public welfare and for the advancement of
132 public policy, the question of the validity of Act No. 2972 is determined in these proceedings in prohibition and injunction.

5. ID.; ID.; RULES OF CONSTITUTIONAL CONSTRUCTION:—The presumption is always in favor of constitutionality. To doubt is to sustain. (*Weems* v. *United States*, 1910, 217 U. S. 378; *Adkins* v. *Children's Hospital*, 1923 U. S. Sup. Ct. Adv. Ops. 440).

133

6. ID.; ID.; ID:—A law should be so construed if possible as to avoid conflict with the Constitution, although such construction may not be the most obvious or natural one. When an Act is susceptible of two or more constructions, one of which will maintain and the others destroy it, the Courts will always adopt the former. (*U. S.* v. *Coombs*, 1838, 37 Peters 72; *Gremada County Supervisors* v. *Brogden*, 1894, 112 U. S. 261; *In re Guarina*, 1913, 24 Phil. 37; *Andres Fuentes* v. *Director of Prisons*, No. 22449).

134

7. ID.; ID.; ID.; JUDICIAL CONSTRUCTION OF ACT NO. 2972:—Act No. 2972 admits of three constructions. The first construction is a literal application of the law, and the second construction permitting of the keeping of duplicate sets of account books by merchants, would probably result in holding the law unconstitutional. But the third construction to the effect that the law only intended to require the keeping of such books as were necessary in order to facilitate governmental inspection for taxation purposes, permits the courts to sustain the law. This is a practical judicial construction of a law where the validity of this law is in issue, which gives to the law a meaning accomplishing everything needed by the Government for taxation purposes, without being unduly oppressive on the individual and which permits the courts to uphold the law.

135

8. *ID.*; ID.; ID.; ID.:—Act No. 2972 is a fiscal measure intended to facilitate the work of the Government agents and to prevent fraud in the return of the merchants, in conformity with the sales tax and the income tax. Conceded that the

136 Chinese handle sixty per cent of the aggregate business of the Philippines, approximate equality in taxation demands that they pay something like the same proportion in taxes for the support of the State.

9. ID.; ID.; ID.; ID:—Act No. 2972 is construed as meaning that any person, company, partnership, or corporation engaged in commerce, industry, or any other activity for the purpose of profit in the Philippine Islands, shall keep its account books, consisting of sales book and other
137 records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue, in effect when this action was begun, in English, Spanish, or a local dialect.

10. ID.; ID.; POLICE POWER AND POWER OF TAXATION IN THE PHILIPPINES:—The police power and the power of taxation exist in the Philippine Islands in about the same form and to the same extent as in a State of the American Union.

11. ID.; ID.; RIGHTS OF THE CHINESE IN THE PHILIPPINE ISLANDS:—The rights of Chinese
138 aliens resident in the Philippine Islands are not less than the rights of American and Philippine citizens. Nor more.

12. ID.; ID.; THE LANGUAGE QUESTION IN THE PHILIPPINES:—A description of the language situation in the Philippines discloses some of the difficulties which have beset the attempt to hasten the adoption of a common language in the Philippines. The Filipino people have cheerfully imposed upon themselves the burden of acquiring

one or more languages other than their native languages. The purpose of their elective representatives in approving Act No. 2972 is to require conformity with governmental policy by a large class of foreign residents, so as to permit of a closer approximation to equality in taxation. 139

The issue in these proceedings is the validity of Act No. 2972 of the Philippine Legislature, popularly known as the Chinese Bookkeeping law. It is a question of paramount importance which the record shows, has been laid before this Court following the failure of diplomatic negotiations and executive pressure to secure from the local lawmaking body either the repeal of the law or a modification of its provisions. It is, moreover, a question which, extensive argument and original investigation disclose, stands in the shadowland betwixt constitutionality and unconstitutionality, to the solution of which we propose to give careful consideration. 140

The petitioners are Chinese merchants claiming to represent themselves and all other persons similarily situated and affected, particularly twelve thousand Chinese merchants. The respondents, against whom the petition for prohibition and injunction is directed, are the Collector of Internal Revenue, the Fiscal of the City of Manila, and Honorable Pedro Concepcion, Judge of First Instance of Manila. The allegations of the petition center on the unconstitutionality of Act No. 2972 above mentioned. 141

Inasmuch as the property and personal rights of nearly twelve thousand merchants are affected by those proceedings, and inasmuch as Act No. 2972 is a new law not yet interpreted by the

142 courts, in the interest of the public welfare and for the advancement of public policy, we have determined to overrule the defense of want of jurisdiction in order that we may decide the main issue. We have here an extraordinary situation which calls for a relaxation of the general rule.

The sales tax and the income tax furnish a substantial part of the revenue. Roughly speaking, about P10,000,000 from the sales tax and about P2,000,000 from the income tax are secured annually. (Exhibit 13.) Any appreciable leaks
143 in these sources of governmental revenue would be highly undesirable.

The law is attacked by the petitioners as in violation of treaty and constitutional rights of Chinese merchants, domiciled in the Philippine Islands. It is contended with marked earnestness, that the law is unreasonable and oppressive in nature, and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States and the corresponding provisions of the Jones Law, the Act of Congress of August 29, 1916, guaranteeing to all persons the equal protection of the laws. The law is defended by
144 the City Fiscal of Manila as a proper and reasonable exercise of the police power of the Philippine Government, and of its power of taxation.

Four questions suggest themselves for discussion. What would be the probable effect, if Act No. 2972 was put in operation? What was the purpose of the Legislature in enacting Act No. 2972? What are the respective legal rights of the Chinese and of the Government? What is a logical construction of Act No. 2972? In connection with the first question it is of course, un-

deniable that we cannot declare a legislative Act 145
void because it conflicts with our opinion of what is just or expedient. Nevertheless, the effects and consequences enter with more or less force into consideration, whenever the validity of any law is in issue. (See 2 Lewis' Sutherland Statutory Construction, pp. 908, *et seq.*)

The pleadings, the evidence, and the decision in *Young* v. *Rafferty, supra*, disclose with regard to the mercantile life of the Philippines, the following facts:

There are approximately 85,000 merchants of all nationalities in the Philippines, to whom Act 146
No. 2972 applies, of this number, 71,000 are Filipinos who may use their own dialects, unless they prefer English or Spanish. Approximately 1,500 are American, British, or Spanish subjects, who are permitted to use their native language. Possibly 500 are of foreign nationalities most of whom know the English or Spanish language. Of the remainder, between 10,000 and 12,000 are Chinese. The aggregate commercial business transacted by the Chinese merchants represents about sixty per cent of the total business done by all the merchants in the Philippine Islands. 147
According to Mr. H. B. Pond, vice president and general manager of the Pacific Commercial Company, the Chinese "are the principal distributing factors in the Philippine Islands of imported goods, and the principal gatherers of goods for exportation in the more remote places," and if the Chinese were driven out of business, "there would be no other system of distribution available throughout the Islands." It is further claimed, on the one hand, that not to exceed one per cent of the Chinese merchants in the Philip-

148 pine Islands understand English, Spanish, or a local dialect sufficiently well to be able to keep or revise their own books or account in any one of these languages, and that not to exceed ten per cent have even a working knowledge of either English, Spanish, or a local dialect, and on the other hand, that at least two-thirds of the Chinese businessmen can easily comply with the law.

Counsel for the petitioners is sponsor for the sweeping statement that "the enforcement of Act 2972 would probably cause more danger and less good than any other law which has been en-
149 acted in the world." This strong stand is to a certain extent corroborated by resolutions adopted and signed by the principal business houses in the City of Manila and by number of chambers of commerce (Exhibits C, D, E, F, G, H, I, and J, attached to the petition); by the vigorous protest of the Chinese foreign office (Exhibit K); by the opinions expressed by high officials in the War Department "that the law is fundamentally unwise" (Exhibit L.) and "is obstructive of good understanding with our neighbors" (Exhibit M); and by the testimony of a
150 large number of Chinese merchants and of other well qualified persons to the effect that sufficient bookkeepers are not available, that it would not be possible for many Chinese merchants, especially the smaller ones, to comply with the law, and that if Chinese merchants were compelled to keep their books in any language other than the Chinese language, it would bring serious embarrassment to the great majority and might even drive many of them out of business.

The reply of the fiscal is to the effect that the oppressiveness of the law has been considerably

exaggerated, that it applies as well to Japanese and other foreign merchants who do not complain, that only a relatively small per cent of the Chinese merchants seek to obstruct the enforcement of the law, that bookkeepers are available if the Chinese wish to employ them, and that the new law will facilitate governmental inspection of merchant's books. Numerous witnesses have been called and numerous documents have been offered to substantiate the stand taken by the Government. We will here notice only an indorsement by Wenceslao Trinidad, former Collector of Internal Revenue, and the testimony of Juan Posadas, the present Collector of Internal Revenue. 151 152

Some slight consideration of the language question in general and of the language question in the Philippines in particular, will assist us in determining if the effect of enforcing Act No. 2972 will cause as much hardship and will be so oppressive on one particular nationality as to nullify the law, or whether the judiciary can constitutionally enforce the law. The above brief description of the language situation at least discloses some of the difficulties which have beset the attempt to hasten the adoption of a common language in the Philippines. Yet it is evident, that the Filipino people have cheerfully imposed upon themselves the burden of acquiring one or more languages other than their native languages and have now, through the elective representatives, sought to require conformity with governmental policy by a large class of foreign residents. 153

The purpose of the legislature in enacting Act No. 2972 is disclosed by the decision of this Court

154 in *Young* v. *Rafferty, supra,* by the Messages of the Governor-General, by the hearings before the committees of the Philippine Legislature, and by other sources. All these indicate that the Act is a fiscal measure intended to facilitate the work of the governmental agents and to prevent fraud in the returns of merchants, in conformity with the sale tax and the income tax. For instance, in the decision in *Young* v. *Rafferty, supra,* it was stated: "It need hardly be said that the record which merchants are required to keep of their daily sales under the pro-
155 visions of the circular letter of the Collector set out in the complaint is simplicity itself, and that it will, if honestly and faithfully kept, enable the Government to collect the percentage tax exactly due it."

Conceded that the Chinese handle sixty per cent of the aggregate business of the Philippines, approximate equality in taxation demands that they pay something like the same proportion in taxes for the support of the State.

The presumption is always in favor of constitutionality. As the United States Supreme
156 Court in a case of Philippine origin said: "The function of the legislature is primary, its exercises fortified by presumptions of right and legality, and is not to be interfered with lightly, nor by any judicial conception of their wisdom or propriety." (*Weems* v. *U. S.*, 1910, 217 U. S. 376). This presumption is especially strong in the cases of statutes enacted to promote a public purpose, such as statutes relating to taxation. To doubt is to sustain.

We have been enveigled into a much more elaborate discussion of this case than is at all

essential, for two reasons: firstly, because of the 157
earnestness of counsel who have impressed on the Court with marked ability the merits of their respective cases and the dangers which lurk in a contrary holding; and secondly, because of the effectiveness of the background as indicative of executive purpose and legislative intent. Speaking frankly, however, a majority of the Court has all the time had a well defined opinion which we will now state. We come to the last question suggested, a construction of Act No. 2972 which allows the Court legally to approve it.

A literal application of the law would make it 158
unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish, or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional.

A second interpretation is that the Chinese merchant, while permitted to keep his books of account in Chinese, must also keep another set of books in either English, Spanish, or a native dialect. The respondents claim the law is susceptible of such construction. It occurs to us, 159
however, that this construction might prove as unsatisfactory as the first. Fraud is possible in any language. An approximation to governmental convenience and an approximation to equality in taxation is the most which may be expected.

A third construction which is permissible in view of the history of the legislation and the wording of the statute, is, that the law only intended to require the keeping of such books as were necessary in order to facilitate govern-

160 mental inspection for tax purposes. It has not escaped our notice that the law does not specify what books shall be kept. It is stated by competent witnesses that a cash book, a journal, and a ledger are indispensable books of account for an efficient system of accounting, and that, in the smaller shops, over simpler entries showing merely the daily record of sales and record of purchases of merchandise would be sufficient. The keeping of records of sales, and possibly further records of purchases, in English, Spanish or a native dialect, and the filling out of the
161 necessary forms would serve the purpose of the Government while not being oppressive. Actually, notations in English, Spanish or a dialect of all sales in sales books, and of data in other specified forms are insisted upon by the Bureau of Internal Revenue, although as appears from Exhibit 2, it is doubtful if all Chinese merchants have complied with these regulations. The faithful observance of such rules by the Chinese is not far removed from the offer of cooperation oft made for them by the petitioners or the "translation of the account books" oft mentioned and explained by the respondents.

162 The law, in speaking of any person, company, partnership or corporation, makes use of the expression "its account books." Does the phrase "its account books" mean that all the account books of the person, company, partnership, or corporation must be kept exclusively in English, Spanish, or any local dialect? The petitioners argue that the law has this meaning. Or does the phrase "its account books" mean that the persons, company, partnership, or corporation shall keep duplicate sets of account books, one

set in Chinese and the other a translation into English, Spanish, or any local dialect? Counsel for the respondents urge this construction of the law upon the Court. Or does the phrase "its account books" mean that the person, company, partnership, or corporation must keep such account books as are necessary for taxation purposes? This latter interpretation occurs to us as a reasonable one and as best safeguarding the rights of the accused. And lastly, what effect has Act No. 2972 had upon the provisions of the Code of Commerce on the subject of merchants? Has the Act repealed or modified any article of the Code of Commerce? 163 164

The interrogatories above made at least lead to the deduction that the law is more or less ambiguous and that it will bear two or more constructions.

Let us repeat: Act No. 2972 is a fiscal measure. It should be so construed if possible as to effectuate legislative intent, as collected from the occasion of the law, the circumstances under which it was enacted, the mischief to be remedied, and the policy which dictated its passage. It should be so construed if possible as to avoid conflict with the constitution, although such construction may not be the most obvious or natural one. Giving, therefore, to the law a meaning which will carry out the main governmental purpose and which will permit us to sanction its constitutionality, it seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in the books of accounts or forms subject to inspection for taxation purposes in any other language than either the English or Spanish or a local dialect, al- 165

166 though permitting all merchants to execute their commercial transactions or operations in any language or dialect they may prefer, and although permitting them to keep such other books of account as their personal convenience may dictate and in a language which will come most easily to them. We would go so far as to hold that circular No. 467 of the Bureau of Internal Revenue which this Court once held beyond the power of the Collector of Internal Revenue to promulgate, and any other reasonable regulation of a similar nature, as within the
167 power of the Philippine Legislature to sanction and entirely enforceable.

To any possible plaint by the Government, that this is tantamount to "judicial legislation" we would say: It is not "judicial legislation" as this phrase is commonly used in the spirit of antagonistic fault finding. No words are written into the law. No words are taken out of the law. It is merely a practical judicial construction of a law where the validity of this law is in issue, which gives to the law a meaning accomplishing everything needed by the Government for tax
168 purposes, without being unduly oppressive on the individual, and which permits the courts to uphold the law.

To the petitioners, who by our decision do not obtain all they may wish, we append this word of advice: Under such a construction as is above indicated, the Chinese will not be singled out as a special subject for discriminating and hostile legislation. There will be no arbitrary deprivation of liberty or arbitrary spoliation of property. There will be no unjust and illegal discrimination between persons in similar circum-

169

stances. The law will prove oppressive to the extent that all tax laws are oppressive, but not oppressive to the extent of confiscation. The means to accomplish a necessary interference with private business are no more oppressive upon individuals than is necessary to maintain the State. The law is not intended for the convenience of the trader or the protection of the creditors, but has relation to the public welfare, to the power of taxation, to the right of the government to exist. The Chinese must bear their just proportion of the tax burden, however, unwelcome it may be, without flinching.

170

A faint effort has been made by the petitioners to have the Court declare Act No. 2972 void because the subject thereof is not expressed in its title. But legislation should not be embarrassed by such strict construction as is urged by counsel. No distinguishable variance between the title of the law and the body of the law can be discovered after microscopic examination. The law is brief in its terms, and neither the Legislature nor the public need be misled by the title. (*Government of the P. I.* v. *Binalonan*, 1915, 32 Phil. 634.)

171

172

Exhibit "L."

Following are the dissenting opinions of Justices Johns and Street of the Supreme Court in the Chinese Bookkeeping Law case, the constitutionality of which was upheld recently by a majority of the court:

UNITED STATES OF AMERICA, PHILIPPINE ISLANDS

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173 IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

IN BANC.

YU CONG ENG., *et al.*,
Petitioners,

vs.

W. TRINIDAD, Collector of Internal Revenue, *et al.*, Respondents.

174 G. R. No. 20479.

Submitted:

Promulgated:

Justices present:

STREET, MALCOLM, AGANCENA, VILLAMOR, OSTRAND, JOHNS and ROMUALDEZ, *JJ.*

JOHNS, *J.*, Dissenting:—

With all due respect to the well written, exhaustive majority opinion, the only question involved is the meaning and construction which

should be placed upon Act No. 2972, which is entitled "An Act to provide in what language account books shall be kept, and to establish penalties for its violation."

> "Section 1: It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect."
>
> "Section 2: Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos or by imprisonment for not more than two years or both."

It will be noted that Section 1 makes it unlawful for any of the persons specified "to keep its account books in any language other than English, Spanish or any local dialect." Section 2 provides that any person violating the provisions of Section 1 shall be punished by a fine of not more than P10,000.00 or by imprisonment for not more than two years or both. In other words, you have a law prohibiting the doing of certain things and providing a punishment for its violation. Hence, the statute in question is a criminal law, and must be construed as such.

Sutherland on Statutory Construction is recognized as standard authority all over the world, and portions of it are quoted with approval in the majority opinion.

In his Second Edition, Section 531, the author says:

> "WHAT STATUTES ARE PENAL.—Among penal laws which must be strictly construed,

178 those most obviously included are all such acts as in terms impose a fine or corporal punishment under sentence in state prosecutions, or forfeitures to the state as a punitory consequence of violating laws made for preservation of the peace and good order of society."

The majority opinion frankly says:

"A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional."

179

In Section 363, *Sutherland on Statutory Construction*, it is said:

"If a statute is plain, certain and unambiguous, so that no doubt arises from its own terms as to its scope and meaning, a bare reading suffices: then interpretation is needless."

"Section 366. * * * We are not at liberty to imagine an intent and bind the letter of the act to that intent; much less can we indulge in the license of striking out and inserting, and remodeling, with the view of making the letter express an intent which the statute in its native form does not evidence. Every construction, therefore, is vicious which requires great changes in the letter of the statute, and, of the several constructions, that is to be preferred which introduces the most general and uniform remedy.

180

"* * * No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for,

justify any judicial addition to the language 181
of the statute.

"The legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the act read by itself, or in connection with other statutes pertaining to the same subject, is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. * * *

If a legislative enactment violates no constitutional provision or principle, it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy 182
of its passage. Courts have, then, no power to set it aside, or evade its operation by forced and unreasonable construction. If it has been passed improvidently, the responsibility is with the legislature and not with the courts.

"Section 520. STRICT CONSTRUCTION OF PENAL STATUTES.—The penal law is intended to regulate the conduct of people of all grades of intelligence within the scope of responsibility. It is therefore essential to its justice and humanity that it be expressed in language which they can easily comprehend; that it be held obligatory only in the sense in which all can and will understand it. 183
And this consideration presses with increasing weight according to the severity of the penalty. Hence every provision affecting any element of a criminal offense involving life or liberty is subject to the strictest interpretation; and every provision intended for the benefit of the accused, for the same humane reason, receives the most favorable construction. The rule that penal laws are to be construed strictly is perhaps not muchless old than construction itself. It is founded on the tenderness of the law for the

184 rights of individuals; and on the plain principle that the power of punishment is vested in the legislature, not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment. . . . The case must be a very strong one indeed which would justify a court in departing from the plain meaning of the words, especially in a penal act, in search of an intention which the words themselves did not suggest. . . .

" . . . 'The established rule is,' says the court in *Ex parte Bailey,* 'that a penal law must be construed strictly, and accord-
185 ing to its letter. Nothing is to be regarded as included within them that is not within their letter as well as their spirit; nothing that is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended by the legislature. . . .

"Section 521. A penal statute cannot be extended by implication or construction. It cannot be made to embrace cases not within the letter, though within the reason and policy, of the law."

Applying such rules of construction to Act No. 2972, how, where or in what manner is the lang-
186 uage of Act. No. 2972 ambiguous, indefinite or uncertain? Every word of it is intelligible English. Where is there any doubt or uncertainty as to the meaning of any word in the act? As the majority opinion states, if the language used in the act means what it says, it must be construed as unconstitutional. For such reason, the majority opinion holds that the act should not be construed to mean what it says, but that it should be construed to mean what it is claimed the legislature intended it should mean. If the language in the act was indefinite,

uncertain or ambiguous that position would be tenable. 187

Numerous decisions are cited in the majority opinion, all of which are good law, but only two of them are in point upon the main question here involved, and both of them are squarely against the law as laid down in the majority opinion. In legal effect, that opinion holds that Act No. 2972, in its existing form and as it was enacted by the Legislature, is unconstitutional and void. It then proceeds to reconstruct, change and modify the law, and then holds that the law, as reconstructed and modified is constitutional. 188 No law is cited which authorizes this or any other court to reconstruct or modify the plain, simple language of a legislative act, for the simple reason that no such a law will ever be found. But, as Sutherland says, where, as in the instant case, the language is clear and explicit, it must be construed to mean what it says.

On legal principle, the case of *Meyer* v. *Nebraska*, decided by the Supreme Court of the United States at the October Term, 1922, 67 Law ed., 390, cited in the majority opinion, is square in point. The Legislature of Nebraska passed a 189 law entitled "An Act Relating to the Teaching of Foreign Languages in the State of Nebraska," Section 1 of which is as follows:

> "No person, individually or as a teacher, shall in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language."
>
> "Section 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained

190 and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

"Section 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five ($25) dollars, nor more than one hundred ($100) dollars or be confined in the county jail for any period not exceeding thirty days for each offense."

191 That court held the act unconstitutional and void under the Fourteenth Amendment. Notice the similarity of the legal questions involved. Also notice that Section 2 of that act provides that English language may be taught after the pupils have passed the eighth grade. In the instant law, there is no exception whatever. That law was held void by the highest court of the land whose decisions this court should follow and respect. By comparison of the two laws, it will be noted that there is much stronger reason for holding the law unconstitutional in the instant case than in the case of *Meyer* v. *Nebraska*.

192 It will also be noted that the Supreme Court of the United States squarely met and decided the constitutionality of the law.

The Legislature of the Hawaiian Kingdom enacted a law, Section 1 of which is as follows:

"That from and after the first day of October next, no wholesale or retail license shall be granted to any person except upon the express condition that such licensee shall at all times keep full, true and correct books of account of all business transacted by him in connection with such licensed business,

193

which books of account shall be kept in the English, Hawaiian or some European language."

And the Supreme Court of Hawaii, in 7 Hawaiian Reports, 489, held that the law was unconstitutional and void.

Compare the language used in the Nebraska Act and the Hawaiian Act with that of Act No. 2972. In each case, it is plain, clear and simple, and there is no doubt as to what the legislature intended. In the Nebraska case, there was no attempt made by the Supreme Court of the 194
United States to reconstruct, change or modify the law as it was enacted by the legislature. The same thing is true in the Hawaiian case.

You will look in vain to find a decision of the Supreme Court of the United States where that court has ever reconstructed or modified the plain, clear, simple language of a legislative act, for the purpose of holding it constitutional. We frankly concede that, for taxation purposes, the legislature has the power to enact a law requiring that a record of all sales and purchases should be kept in a given language, and to specify
and define how and in what manner such records 195
should be kept, and that such a law would be valid. But we are not dealing with the question of what the legislature can do. The question involved here is what the legislature has done. Both in the title and the body of the act, the legislature has said that it shall be unlawful for any person, firm or corporation engaged in certain lines of business to keep its account books in any language other than English, Spanish or any local dialect, and has expressly imposed a

196 penalty for a violation of the act. There are no exceptions or limitations in the language, and it is not confined or limited to any specific purpose. It is broad and general and applies to any and all account books which may be kept or used in connection with the business.

The majority opinion holds that the law should be construed to read that account books, for taxation purposes only, shall be kept in either English, Spanish or any local dialect. With all due respect to the majority opinion, that is the very highest type of judicial legislation. If the act
197 is to be so construed, then the law itself should specify and define what books are required to be kept, for taxation purposes, and how they should be kept, or it should delegate that power to the tax officials.

Assuming, as the majority opinion does, that Act No. 2972 should read that account books, for taxation purposes, should be kept in either English or any local dialect, the act does not specify or define what books shall be kept or how and in what manner they shall be kept. Neither does it delegate that power to anyone else. In its effort
198 in trying to get out of one hole and make a void law a valid law, the majority opinion runs into another hole, which is equally fatal to the law. If, as it holds, Act No. 2972 should be construed to mean that account books, for taxation purposes only, should be kept in either English, Spanish or some local dialect, and the law does not specify what books shall be kept or how and in what manner they shall be kept, and that power is not delegated to anyone else, how can the law be enforced? Under such a construction, if a defendant should be charged with a viola-

tion of the law, what law has he violated, and upon what legal principle could a conviction be sustained? Upon that point, the law as drafted by the legislature is definite and certain. In legal effect, it provides that all account books for any and all purposes shall be kept in either English, Spanish or some local dialect. The law as reconstructed by the majority opinion would be that such account books are to be confined and limited to account books for taxation purposes. Yet, the law does not specify what books shall be kept for that purpose, or how or in what manner they shall be kept, or what the entries shall contain. Neither is that power delegated. In the absence of such provisions, how could anyone be convicted of a violation of the law? For what crime could he be charged and what would be his offense?

Apparently, the majority opinion realizes the legal effect of its reconstruction of the law, for on page 36, the opinion says:

> "It seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in the books of account or forms subject to inspection for taxation purposes in any other language than either the English or Spanish language or a local dialect."

And on page 37, it says:

> "We would go so far as to hold that circular No. 467 of the Bureau of Internal Revenue which this Court once held beyond the power of the Collector of Internal Revenue to promulgate, and any other reasonable regulation of a similar nature, as within the power of the Phillipine Legislature to sanction and entirely enforceable."

202 But it will be noted that Act. No. 2972 does not say anything about "entries in the books of account or forms subject to inspection for taxation purposes." Neither does it say anything about circular No. 467 or any other reasonable regulation of a similar nature." Neither is there any delegations of power to anyone. Hence, it must follow that until such time as the law is amended by the leglislature covering those points, it cannot be enforced. The act in question is in no way connected with, and does not in any manner refer to, the "Code of Commerce."

203 Act No. 2972 is entitled "An Act to provide in what language account books shall be kept, and to establish penalties for its violation," and Section 1 provides that it shall be unlawful for certain persons "to keep its account books in any language other than English, Spanish or any local dialect." The act is complete within itself and is separate and distinct from, and makes no reference whatever to, any other act.

The Code of Commerce is entitled "Merchants and Commerce in General," and deals with commercial bodies and commercial transactions.

204 If, as the majority opinion holds, Act No. 2972 should read "account books for taxation purposes," then Act No. 2972 should be confined and limited to questions of taxation, which are entirely separate and distinct from "merchants and commerce in general." We have yet to learn that, legally speaking, questions of commerce and commercial transactions are synonymous with questions of taxation.

It is said that this court has never declared an act of the legislature unconstitutional. Assuming that to be true, it is no argument for or against

the constitutionality of any law. On legal principle, Act No. 2972 was declared unconstitutional by the Supreme Court of the United States; an example which it would be well for this court to follow. However grave the responsibility may be, if a given law is unconstitutional, under our oath of office, it is our duty to so declare it. 205

We repeat that no law is cited in the majority opinion and that none will ever be found which holds the law in question to be constitutional. The majority opinion violates every rule above quoted of *Sutherland on Statutory Construction.*

For such reasons, I vigorously dissent. 206

Plaintiffs should have the writ prayed for in their petition.

CHARLES A. JOHNS.

YU CONG ENG, *et al.* v. TRINIDAD, *et al.*
G. R. No. 20479.

STREET, *J.*, dissenting:

The Act which has been assailed in this case looks innocent enough on its face but when examined in connection with conditions among those for whom it was prescribed, compliance is found to be impossible, or supposing that the Act could be complied with, the loss resulting to thousands of Chinese merchants would be so disproportionate to any possible good to be attained that the enforcement of the law would amount to a denial of liberty and equal protection of the law to the persons adversely affected. 207

208 It is unnecessary for me to enlarge upon the destructive effects of the law as a ground for declaring it invalid, for it is admitted in the majority opinion that if Act No. 2972 is taken to mean what it says, it must be considered a dead letter. But after admitting this much, the court, in its extreme reluctance to declare the entire statute void, addresses itself to the problem of limiting its effect by what I consider to be an illegitimate process of judicial amendment under the guise of interpretation. The first section of the Act, as thus amended by the Supreme Court,
209 reads as follows:

> "It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books, (consisting of sales books and other records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue in effect when this action was begun) in any language other than English, Spanish or any local dialect."

210 The new matter which I have here inserted in parenthesis is taken verbatim from the dispositive part of the decision and defines precisely the extent to which the court has decided to allow the Act to operate. Where are the rules of interpretation by which this matter can be deduced from the language of the Act? The opinion of the court supplies no answer. Of course if the Legislature had confined the Act to giving the Collector of Internal Revenue a power to prescribe forms and require data convenient for the

assessment of taxes, the law would not have been 211
subject to criticism; but how can an intention to legislate in this form be deduced from the proposition, so entirely distinct, contained in the Act, that it shall be unlawful for a merchant to keep his account books in other language than those mentioned? That the court is here exercising the mere role of a legislator is very obvious, for who can say that the Philippine Legislature, conscious of the ineffectiveness of the law as written, would have willed that the power granted to the Collector should take the precise form and extent now allowed by the court? In assuming 212
the functions of a legislature we are entering upon a sea that has not been charted for the guidance of courts, and if this decision should prove fruitful as a precedent we shall find ourselves free in the future to wander pretty much at will through legislative Acts.

The precise rule applicable to this case is stated in *Meyer* v. *Nebraska*, 262 U. S., 390, 67 L. ed., 1042, where the Supreme Court of the United States, speaking through Mr. Justice McReynolds, declared that the liberty secured by the constitutional provision under discussion 213
may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.

The decision of the Supreme Court of Hawaii in *King* v. *Lao Kiu*, 7 Hawaiian Rep., 489, declaring invalid a statute almost exactly like that involved in this action is also suggestive, as reflecting judicial sense in a community containing a large element of Chinese population.

214 It is my opinion that Act No. 2972 of the Philippine Legislature is wholly void, and the injunction should have been made perpetual. In addition to smashing the law the court should have removed the debris.

THOS A. STREET.

Exhibit "M."

"Peking
215 "Dated April 28, 1921.
"Rec'd 11:15 a. m.

"Secretary of State,
"Washington, D. C.
"169, April 28, 5 p. m.

"Chinese Foreign Office vigorously protest Philippine's municipal authority requiring all bookkeeping in English, Spanish or Philippine dialect. Commercial attache and Legation fear great indignation aroused by this legislation and that immediate results thereof may prejudice American-Chinese commercial and friendly re-
216 lations. Text by mail.

"CRANE.

"A true copy of record on file in this office.

"J. M. WOOLFOLK
"Assistant Secretary to the Governor-General."

WSB

Exhibit "N." 217

"War Department

"Bureau of Insular Affairs

"Washington, July 14, 1922.

"General Leonard Wood,
"Governor-General of the Philippine Islands,
"Manila P. I.

"My dear General:

"The Legislature has postponed the date on 218
which the bookkeeping law, which was the subject of correspondence last year, is to go into effect. This, however, has not prevented correspondence through the Chinese Legation and through commercial bodies who feel that the law is an imposition on their Chinese customers in the Islands.

"We are of the opinion here that the law is fundamentally unwise. The object of it is apparent, and any reasonable measures to prevent frauds on the revenue collections are not open to criticism. It is felt, however, that frauds may 219
be committed in any language, and while keeping books in Chinese, or other foreign languages, is an inconvenience to the tax collector, this inconvenience is greatly overbalanced by that of the merchant having his books kept in a language which he does not understand. A reciprocal provision in China would meet our serious protest.

"These arguments, of course, are familiar to you, and I am desirous of having you under-

220 stand that the Secretary and those of us who have studied the matter here feel that it would be a great relief if the law were definitely repealed.

"We understand that the law did not originate with Filipinos. It was recommended by an American collector of internal revenue and subsequently by an American Governor-General. This, however, does not prevent the public from looking on it as a Filipino legislative act and as an indication of the sort of act which the Philippine Legislature might enact in dealing
221 with foreigners.

"I believe, therefore, that the Legislature, in order to put itself right, should repeal this act.

"With kind regards, I am,

"A true copy of record
on file in this office.

"Very sincerely,

(Sgd. "FRANK MCINTYRE,
"Chief of Bureau.

"J. M. WOOLFOLK
"Assistant Secretary of the
"Governor-General.

222

"Manila, Aug. 14, 1923."

Exhibit "O."

223

"Executive Form No. 5.

"Cablegram Requiring Action Must Have *Immediate* Attention.

"CABLEGRAM

"RECEIVED

"Office of the Governor-General
of the Philippine Islands
"Manila

"Washington, October 10, 1922. 224

"No. 228.
"Wood,
"Manila.

"Referring to letter from your office August 2d and letter from Bureau of Insular Affairs dated July 14th, bookkeeping law, Secretary of War is strongly of the opinion that legislature should repeal law at coming session as it accomplishes little and is obstructive of good understanding with our neighbors.

"McIntyre. 225

"A true copy of record on file
in this office

J. M. WOOLFOLK,
"*Assistant Secretary to the*
Governor-General.

"Record."

IN THE

Supreme Court of the United States

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

vs.

W. TRINIDAD, as the Collector of Internal Revenue of the Philippine Islands, EULOGIO P. REVILLA as the Fiscal of the City of Manila and HON. PEDRO CONCEPCION as Judge of the Court of First Instance of the City of Manila,

Respondents.

BRIEF IN SUPPORT OF APPELLANTS' PETITION FOR WRIT OF CERTIORARI.

Statement.

This is a petition for a writ of certiorari to the Supreme Court of the Philippine Islands. Petitioners presented in the court below a petition for a writ of prohibition on behalf of themselves and all Chinese merchants similarly situated against prosecution of criminal actions

under Philippine Act No. 2972, which is fully discussed hereafter. The petition for prohibition was dismissed below and petitioners have presented their petition for a writ of certiorari *in order that this Court may review the determination* of the Court below.

As the facts are set out fully in the petition with appropriate references to the record a brief resumé will suffice here.

Facts.

Petitioners are Chinese merchants, engaged in business in the Philippine Islands. *There are about 12,000 other Chinese merchants similarly situated who transact about 60% of the total business of the Philippines* (Rec. pp. 1-10; 33-35; 7 of Exh. C).

The Philippine Legislature enacted a law (Act No. 2972) providing that no books of account should be kept in languages other than English, Spanish or Filipino.

Petitioners are ignorant of the designated languages; have always kept their account books in Chinese; and would be obliged to abandon business if said law were enforced (Rec. pp. 271; 273; 356-357).

Petitioner Yu Cong Eng has been arrested for violation of the law. The respondent Collector has declared his intention to cause all violations to be prosecuted.

Petitioners and other Chinese merchants have furnished up to the present time all necessary data respecting taxable transactions in the manner required by the Collector. The Collector has experienced no difficulty in securing competent

Chinese accountants to inspect books of Chinese merchants when advisable. The American Secretary of War, the Chinese Foreign Office and numerous trade associations have protested vigorously against this enactment. Its incidence will fall almost exclusively upon the Chinese (Rec. p. 279, etc.).

Petitioners applied to the Supreme Court of the Philippine Islands for a writ of prohibition to enjoin all prosecutions under the Act. The application was denied and the constitutionality of the Act sustained by a divided court, two judges dissenting. The decision was predicated upon a fanciful construction of the law wholly at variance with the plain import of the language of the Act. (Rec., p. ....).

BRIEF OF ARGUMENT.

I.—Act No. 2972 is void as being on its face contrary to the prohibitions of the Philippine Bill of Rights and the Fifth Amendment to the Federal Constitution. It punishes in the petitioners and others similarly situated what is permitted to others as lawful without any distinction of circumstances, to wit, the use of their native tongue in a necessary incident of a legitimate occupation. This is an unjust and illegal discrimination which is made inevitable by this Act.

II.—The Act is also void because it denies to petitioners and others similarly situated the rights, privileges and immunities secured to them by the treaties between the United States and China which secure to Chinese nationals "most favored nation" treatment.

III.—This Court has jurisdiction to determine the validity of the Act untrammeled by the construction thereof adopted by the Philippine Court. That construction is clearly erroneous. It is completely at variance with the plain import of the language of the Act.

ARGUMENT.

I.

(Italics Ours Throughout.)

Act No. 2792 is void on its face as being contrary to the prohibitions of the Philippine Bill of Rights and the Fifth Amendment to the Federal Constitution. It punishes in the petitioners and others similarly situated what is permitted to others as lawful without any distinction of circumstances, to wit, the use of their native tongue in a necessary incident of legitimate business. This is an unjust and illegal discrimination which is made inevitable by the Act.

Act No. 2972 represents an attempt of the Legislature under the guise of a spurious revenue measure to destroy an important class in the community. The inevitable and intended effect of enforcement will be the destruction of all but the largest Chinese merchants.

The Chinese alone of the 85,000 *merchants in the Philippine Islands are affected by the Act, which seeks to deprive them of the right to employ their own language in private commerce.* This constitutes a deprivation of the right to liberty and property guaranteed by the Philippine Bill of Rights, which provides:

> "That no law shall be enacted in said Islands which shall deprive any person of

> life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws." (Sec. 3 of the Philippine Autonomy Act, 1918, Supp. Fed. Stat., Anot., p. 593.)

This is the precise language of the Fifth and Fourteenth Amendments and therefore the decisions of this court and other courts thereunder must be examined for the purpose of determining the validity of Philippine legislation.

> "It is a well settled rule of construction that language used in a statute which has a settled and well-known meaning sanctioned by judicial decision is presumed to be used in that sense by the legislative body. *The Abbotsford*, 98 U. S. 440."
>
> *Kepner* v. *U. S.*, 195 U. S. 100, 124.

See also

> *Diaz* v. *U. S.*, 223 U. S. 442, 455.

(a) The Act on its face creates an illegal classification in that it deprives all but English, Spanish and Filipino speaking inhabitants of the right to employ their native tongues in the pursuit of a legitimate occupation. This Court has recently held in *Meyer* v. *Nebraska*, *infra*, that the right to the free use of language was within the protection of the Constitution.

The Supreme Court of the Hawaiian Islands (*The King* v. *Liau Kiu*, 7 Haw. Rep.) held void an Act couched in almost the identical language of Act No. 2972.

The legislation before that court provided that

> "No wholesale or retail license shall be granted to any person except upon the ex-

> press condition that such licensee shall at all times keep full, true and correct books of account of all business transacted by him in connection with such licensed business, which books of account shall be kept in the English, Hawaiian or some European language."

Defendant in the Hawaiian case was a Chinaman, and was convicted of violation of the statute. The Hawaiian Act purported to be for public welfare and its recited purpose was prosecution of fraud. The Philippine Act does not even don the cloak of the police power. It was decided by the Philippine Court as a fiscal measure and sustained as such.

The Hawaiian Court declared:

> "This legislation is an attempt to impose a restriction and a burden upon the exercise of a lawful employment which borders on tyranny."

And at p. 496, referring to the clause requiring account books to be kept in certain languages,

> "The Legislature cannot, without infringing upon liberty and the rights of property, thus discriminate. *The argument that the Chinese language, which is evidently the one that is sought to be proscribed by this Act is occult and understood by few other than the Chinese themselves, is of no force, for there are European languages that are as little understood in this Kingdom as Chinese, and yet the books of account are by this Act allowed to be kept in them.*"

The Philippine Act permits books to be kept in Filipino, and there are eighty-seven distinct

dialects thereof, many of which are unscientific and little used.

The Hawaiian Court further declared that

> "neither the public safety, health or welfare would be promoted by this legislation, etc., * * *."

In *Meyer* v. *Nebraska*, 262 U. S. 390, this Court, considering a similar attempted limitation upon the use of foreign languages, refused to sustain legislation making it unlawful to teach foreign languages to children. The statute was held to be an invasion of the liberty of foreign language teachers to pursue their occupation as well as that of parents to direct the education of their children.

If States may not exercise the police power to bar the use of foreign languages in schools, *a fortiori*, it is not possible under mere color of a revenue law to prohibit employment of a foreign tongue in purely private business.

Concisely and authoritatively is the principle enunciated by Mr. Justice McReynolds speaking for the Court:

> "The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff-in-error by the 14th Amendment. 'No state * * * shall deprive any person of life, liberty, or property without due process of law.'
>
> While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily re-

straint, but *also the right of the individual to contract, to engage in any of the common occupations of life,* to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. * * * *The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.* Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts. *Lawton* v. *Steele,* 152 U. S. 133, 137, 38 L. ed. 385, 388, 14 Sup. Ct. Rep. 499," (p. 399). * * *

"We are constrained to conclude that the statute as applied is arbitrary, and without reasonable relation to any end within the competency of the state" (p. 403).

It is submitted that the Act in the instant case is far less justifiable than that considered in the *Meyer* case. The former by its express terms and natural operation will drive an entire class of the community from the field of private commerce,—a field in which the police power must surely be exercised with greater circumspection than in the education of children. *Moreover, the Philippine law does not even purport to be an exercise of the police power.*

The justification relied upon by the Philippine Court is that it is a revenue measure, and therefore proper. While the convenience of the tax collector may be a laudable end still it is not

sufficiently so to excuse the destruction of a large mercantile class.

The Act effectually denies to the overwhelming majority of Chinese merchants in the Philippine Islands the right to engage in private business and, therefore, of earning a livelihood. A necessary incident of the right to engage in any commercial occupation is the keeping of books of account. Without proper account books no business of any size can go on. Only the most extraordinary considerations of public welfare should be permitted to justify so violent an invasion of individual liberty.

In determining the invalidity of the Oregon School Law, the Court speaking by Mr. Justice McReynolds, found that,

> "The inevitable practical result of enforcing the Act under consideration would be the destruction of appellee's primary schools and perhaps all other private primary schools for normal children within the State of Oregon."
>
> (*Hill Military Academy et al.* v. *Pierce et al.*, decided June 1, 1925 .... U. S. ....)

As this was held to be an unreasonable interference with appellee's liberty the Act could not stand.

In *Truax* v. *Raich* (239 U. S. 33) and in *Adams* v. *Tanner* (244 U. S. 590) this Court frustrated legislative attempts to arbitrarily interfere with the pursuit of lawful occupations.

The former involved consideration of an Arizona penal statute in the following language:

> "Section 1. Any company, corporation, partnership or individual who is or may

> hereafter become an employer of more than five (5) workers at any one time in the State of Arizona regardless of the kind or class of work or sex of workers, shall employ not less than eighty (80) per cent. qualified electors or native born citizens of the United States or some subdivision thereof."

Plaintiff Raich was neither a qualified elector nor native born. He was employed as a cook by defendant Truax who had in his employ at the time nine workers. Truax informed plaintiff that solely by reason of the requirements of the law he intended to discharge him. Plaintiff thereupon filed a bill in the District Court seeking a decree declaring the law unconstitutional under the Fourteenth Amendment and restraining enforcement thereof.

An interlocutory injunction was granted below and on appeal sustained by this Court.

The Court, by Mr. Justice Hughes, declared p. 37:

> *"The right to earn a livelihood and continue in employment unmolested by efforts to enforce void enactments should similarly be entitled to protection in the absence of adequate remedy at law."*

p. 41:

> "It is sought to justify this act as an exercise of the power of the State to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. *But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful in-*

habitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. Butchers' Union Co. v. Crescent City Co., 111 U. S. 746, 762; Barbier v. Connolly, 113 U. S. 27, 31; Yick Wo v. Hopkins, supra; Allgeyer v. Louisiana, 165 U. S. 578, 589, 590; Coppage v. Kansas, 236 U. S. 1, 14. If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no answer to say, as it is argued, that the act proceeds upon the assumption that 'the employment of aliens unless restrained was a peril to the public welfare.' The discrimination against aliens in the wide range of employments to which the act relates is made an end in itself and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor is necessarily involved. It must also be said that reasonable classification implies action consistent with the legitimate interests of the State, and it will not be disputed that these cannot be so broadly conceived as to bring them into hostility to exclusive Federal power. The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting* v. *United States,* 149 U. S. 698, 713. *The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordin-*

> *ary cases they cannot live where they cannot work.* And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality."

The Philippine Act quite as effectually deprives the Chinese of "the right to earn a livelihood."

The Arizona statute represented an avowed attempt to discriminate against alien labor. Its purpose was frankly revealed in its title. The Philippine Legislature, perhaps mindful of the fate of that statute was careful to camouflage its insidious attack upon the Chinese merchants under the cloak of a revenue measure.

In *Adams* v. *Tanner* (244 U. S. 590) this Court was called upon to determine the validity of a Washington law declaring it "unlawful for any employment agent, his representative, or any other person, to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto."

Appellants employment agents filed a bill to have respondents restrained from undertaking enforcement thereof. The bill was dismissed, and upon appeal to this Court, the judgment below was reversed.

Here again a legislature had attempted under the guise of police regulation to invade the ever-narrowing province reserved to individual liberty

under the Fourteenth Amendment. The Court, however, through Mr. Justice McReynolds, recognized that the statute by its natural operation was "one of prohibition and not regulation" (p. 593).

At p. 592:

> "The bill alleges 'that the employment business consists in securing places for persons desiring to work' and unless permitted to collect fees from those asking assistance to such end the business conducted by appellants cannot succeed and must be abandoned. *We think this conclusion is obviously true.*"

It may be said with equal truth that unless the Chinese merchants are permitted to use their native tongue in keeping their books of account, "their business cannot succeed and must be abandoned."

Against an invasion of liberty inevitably conducive to so disastrous a result it surely cannot be sufficient to set up the mere convenience of the government in collecting taxes. Moreover, it is not established that the government will be materially benefited.

The Court continued at p. 594:

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt,

> some can be found quite ready earnestly to maintain that its suppression would be in the public interest. *Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.*"

Another case wherein a classification was held illegal is *A. T. & S. F. Ry.* v. *Vosburg* (238 U. S. 56). There a statute provided for the assessment of damages upon railroad companies and shippers respectively for delay in furnishing cars, and in loading same. But only the measure of damages assessable upon railroad companies included attorneys' fees. This was held such an illegal discrimination as to amount to denial of equal protection.

In *Coppage* v. *Kansas,* (236 U. S. 1) this Court again halted an attempted restriction upon the liberty of pursuing legitimate callings.

Appellant was sentenced to pay a fine with the alternative of imprisonment for violation of an act declaring it unlawful

> "for any individual or member of any firm or any agent, officer or employee of any company or corporation to coerce, require, demand or influence any person or persons to enter into any agreement, written or verbal, not to join or become or remain a member of any labor organization or association as a condition of such person or persons securing employment or continuing in the employment of such individual, firm or corporation."

Appellant superintendent of railroad company had requested a switchman to sign an agreement to withdraw from a labor union, and at the same time informing him that if he did not sign he could not remain in the employ of the company. The switchman refused to sign and was discharged.

The Court upon these facts reversed the judgment of conviction on the ground that the Act was not a proper exercise of the police power.

> "The mere restriction of liberty or of property rights cannot of itself be denominated 'public welfare' and treated as a legitimate object of the police power; for such restriction is the very thing that is inhibited by the Amendment" (p. 18).

Burns Baking Co. v. *Bryan* (264 U. S. 504) is a recent application of the principle that

> "determination by the legislature of what constitutes proper exercise of the police power is not final or conclusive but is subject to supervision by the courts." (*Meyer* v. *Nebraska, supra*, p. 400.)

In the *Burns* case a Nebraska law prescribed the minimum and maximum weights of loaves of bread to be made or offered for sale in the State. The evidence demonstrated that it was impossible to manufacture good bread in the regular way without frequently exceeding the prescribed maximum weights.

In holding the statute void as imposing restrictions essentially unreasonable and arbitrary in that the provision fixing maximum weights is

not calculated to effect the purpose of protecting purchasers from fraud, the Court declared:

p. 513:

> "But a state may not, under the guise of protecting the public arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable or unnecessary restrictions upon them. Constitutional protection having been invoked it is the duty of the court to determine whether the challenged provision has unreasonable relation to the protection of purchasers of bread against fraud by short weights and really tends to accomplish the purpose for which enacted."

Other cases wherein the courts have refused to sustain state statutes are:

Penn. Coal Co. v. *Mahon*, 260 U. S. 393.
Truax v. *Corrigan*, 257 U. S. 312.
Buchanan v. *Warley*, 245 U. S. 60.
Home Tel. & Tel. Co. v. *City of Los Angeles*, 227 U. S. 278.
In *re Lee Sing*, 43 F. 359.
In *re Jacobs*, 98 N. Y. 98.
In *re Henshaw*, 147 Cal. 649.

In *re Sing, supra*, involved an ordinance of the city of San Francisco which required all Chinese inhabitants to remove from a specified area to another specified area within the city. The Circuit Court for Northern District of California held the ordinance void as discriminating and unequal in its operation, and as an arbitrary confiscation of property without due process of law.

(b) Even though the Philippine Act should not be held to expressly effect an invidious classification still "the purpose of the act must be found in its operation and effect." (*Truax* v. *Raich, supra,* at p. 40). Moreover, in *Yick Wo* v. *Hopkins,* 118 U. S. 356, this Court pierced the veil of ordinances couched in the most general terms and not expressly discriminatory, and ascertained that the ordinances were in their administration

> *"directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted they were applied by the public authorities charged with their administration and thus representing the state itself with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States"* (p. 373).

This Court denied the validity of the ordinances and reversed the judgment of the Supreme Court of California upholding the imprisonment of petitioners under the ordinances.

The Court in the *Coppage* case *supra,* at p. 15, affirmed the duty of the Court to examine *de novo* questions under the Constitution regardless of form or state court construction.

> *"But when a party appeals to this Court for the protection of rights secured to him by the Federal Constitution the decision is not to depend upon the form of the State law nor even upon its declared purpose but*

> *rather upon its operation and effect, and upon these matters this Court cannot in the proper performance of its duty, yield its judgment to that of the State Court.*"

The Court in this as in other cases examined all the facts and circumstances surrounding the controverted legislation to determine if it had any reasonable relation to the public health, safety, morals or general welfare. If there be no such relation, then the legislation is not a proper or reasonable exercise of the police power.

In *Mugler* v. *Kansas*, 123 U. S. 623, 661, Harlan, *J.*, said:

> "The courts are not bound by mere forms nor are they to be misled by mere pretenses. They are at liberty— indeed are under a solemn duty—to look at the substance of things whenever they enter upon an inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the Constitution."

Other decisions where this Court looked back of the form of statute to find illegal classifications are:

Henderson v. *Mayor*, 92 U. S. 268.
Bailey v. *Alabama*, 219 U. S. 219.
Guinn v. *U. S.* 238 U. S. 347.
Penn. Coal Co. v. *Mahon*, 260 U. S. 393.
Ci Ah Chong., 2 Fed. 736.

Surely the Philippine statute, whether or not impartial on its face, must by its natural operation make "unjust and illegal discrimination between persons in similar circumstances, material to their rights * * *." This result seems inevitable when one considers that of the 85,000 merchants in the Philippines, only the Chinese will be affected by operation of the law. In its administration the public authorities cannot but apply it "exclusively against a particular class of persons."

In *Pennsylvania Coal Mining Co., supra,* this Court held void a statute prohibiting mining where there was danger of causing the subsidence of human habitations in a case where the operation of the statute would impair contract rights.

In *Buchanan* v. *Warley, supra,* this Court held void a city ordinance forbidding colored persons to occupy houses in blocks where the greater number of houses were occupied by whites, and *vice versa.*

In *Guinn & Beal* v. *U. S., supra,* this Court declared the unconstitutionality of the so-called Grandfather Clause of the Oklahoma Constitution. This case is another application of the doctrine that the court will not be concluded by the mere form of a state statute or constitution but will consider its necessary operation and effect in determining its validity under the Federal Constitution.

Bailey v. *Alabama, supra,* stands also for the proposition that the court will go back of the form and express language of a statute. There a statute was held void which provided

welfare. (Peters v. Iowa ex. rel. State Treasury, 245 U. S. 170), and Act No. 2972 of the Philippine Legislature having been enacted for reasons of public good and public policy, the legislative judgment in the choice of adequate means to effectuate such a policy cannot be superseded by judicial judgment. (McCullough v. Maryland, 4 Wheat. 316, 421; Purity Extract Co. v. Lynch, 226 U. S. 192; Chicago, Burlington and Quincy Railroad Co. v. McGuire, 290 U. S. 549, 569; German Alliance Ins. Co. v. Kansas, 233 U. S. 389; Green v. Frazier, 253 U. S. 233, 240; La Tourette v. MacMaster, 284 U. S. 465, 468; 6 R. C. L. 195, 199; 210, 211.)

II

1. Courts of justice are empowered to enlarge, restrict or qualify the meaning of words in a statute to carry out the intention of the Legislature (Eureka Case, 4 Sawy, 302, Fed. Cas. No. 4548), and a statute may be construed contrary to its literal meaning when a literal construction would result in absurdity and inconsistency, and the words are susceptible of another construction which carries out the manifest intention. (In re Matthews, 109 Fed. 603, 616–618, quoting with approval paragraph 323 of Statutory Construction by Sutherland.)
3. It is not only the privilege but rather the duty of the court, where a statute is reasonably susceptible of two interpretations, by one of which it would be clearly constitutional and by the other its constitutionality would be doubtful to adopt the former construction. (Harriman v. Interstate Commerce Commission, 211 U. S. 407, 422; Knights Templars' Indemnity Co. v. Jarman, 187 U. S. 107, 205.)

III

1. The Supreme Court of the United States cannot review and revise the construction affixed to a state's statute as to a state matter by the court of last resorrt of the state. (Comm. Bank v. Buckingham, 5 How. 317, 342; Johnson v. New York Life Ins. Co. 187 U. S. 491, 496; Ross v. Oregon 227 U. S. 160, 162; Iowa v. Woods, 246 U. S. 491, 496; Stadelman v. Minor, 246 U. S. 544; Erie Railroad Co. v. Hamilton, 248 U. S. 369, 371, 372.)

2. In dealing with the constitutionality of state's statute challenged under the Fourteenth Amendment, the Supreme Court of the United States accepts the meaning thereof as construed by the highest court of the state. (St. Louis and Kansas City Land & Co. v. Kansas City, 341 U. S. 419, 427.)

IV

Act No. 2972 dealing, as it does, with bookkeeping, is a local law and being such, the power to legislate on said matter is not among those surrendered by the states to the Federal Government, and cannot be affected by any treaty between the United States and China. (Patstone v. Pennsylvania, 232 U. S. 138; Heim v. McCall, 239 U. S. 175; Puget Sound Agri. Co. v. Pierce County, 1 Wash. Terr. 159.)

ARGUMENT

I

ACT No. 2972 IS NOT UNCONSTITUTIONAL

1. Books of account are the only means which are at the disposal of the Government to ascertain the amount of taxes to be exacted from merchants. Said books, therefore, partake of the nature of, and should be considered for taxation purposes as, public records. Being such, the same can lawfully be required by the Legislature to be kept in languages known to the Government and its officers and employees. Otherwise, the Government would be, as it is now in fact, at the mercy of such foreign merchants as use in their books of account languages unknown to it, and must needs collect from them only such amount of taxes as they may care to pay, not the exact proportion of their income as fixed by law.

The evident and undeniable purpose of the Act being to protect the Government revenue, businessmen's books of account should be considered as proper subject of governmental regulation. As Mr. Justice McKenna

put it in German Alliance Ins. Co. v. Kansas, 233 U. S. 389, 411:

> A business, by circumstances and its nature, may rise from private to be of public concern and be subject, in consequence, to governmental regulation.

In Fed. Cas. No. 15, 735 (United States v. Mason et al., 26 Fed. 1189), Judge Blodgett said:

> The first question presented is: Has the government the right to take charge of the private business of individuals of *any* character *for the purpose of revenue*, and exercise the control over that business, determine the manner in which the manufacturer shall manufacture, the time wherein he shall work, the manner in which he shall store or keep the article manufactured, and in fact, oversee and regulate his entire business?
>
> Revenue laws of this character are not new to this government. They were adopted at an early date, and have been rigidly enforced, and no question has been seriously raised as to the right of the government under the powers granted in the constitution, to exercise this kind of surveillance and control over certain classes of business. The same power has been assumed and exercised by other governments, from whom, to some extent, this government copied and derived its forms for raising revenue, and we find that the English Government had assumed, long prior to the Revolution and to the Declaration of Independence by the American colonies, the control of the manufacture of spirits within its realm, as well as the manufacture and *sale of various other commodities;* * * *
>
> And it seems to me very clear that when you accept the proposition that the Government assumes this absolute control of the business of the distiller, and this surveillance over the manner in which the business is carried on, it follows almost as a necessary conclusion from the first proposition that the Government has the right to examine any books which the distiller or rectifier may keep pertaining to his business as a distiller, or a rectifier, or a compounder, which will tend to establish either the verity or want of verity of these books; that *for the purpose of the Government every book which a distiller keeps is to a certain extent a Government book;* that *he cannot claim that any book in which he makes an entry per-*

taining to his distillery business is his private book. It belongs to the Government.

We believe that distilleries should not be told from other mercantile business when it comes to regulate them for revenue purposes.

2. Bookkeeping, on account of its public or quasi-public character, may be said to be affected by a public interest in the sense that the Government interest, which is, after all, identified with that of the general public—inasmuch as the proceeds of taxes become public money to be devoted to the conduct of public affairs for the public good—makes it imperative for the Government to know the contents of such books by means that it may deem proper for the protection of its revenue. It is well settled that things, like bookkeeping in this case, clothed with a public interest can lawfully be regulated and interfered with by the Government under its sovereign powers. (German Alliance Ins. Co., *supra;* Clark v. Nash, 198 U. S. 361; Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527; Noble State Bank v. Haskell, 219 U. S. 104; Pierce Oil Corp. v. Hope, 248 U. S. 498; La Tourette v. McMaster, 248 U. S. 465; Block v. Hirsh, 256 U. S. 135.)

3. That bookkeeping is a matter affected by a public interest under the Philippine Code of Commerce is made apparent by the very provisions thereof. Undoubtedly, Act No. 2972 refers to said code, among other laws, in mentioning persons, companies, partnerships, and corporations *engaged in commerce, industry,* or any other profitable activity, *"in accordance with existing law."* Now, merchants are required by the Code of Commerce to keep certain specified books of account which must be legalized by justices of the peace, as shown by its following provisions:

ART. 33. Merchants shall necessarily keep:

1. A book of inventories and balances.

2. A journal.
3. A ledger.
4. A copying book for letters and telegrams.
5. The other books required by special laws.

Associations and companies shall also keep a book or books of minutes, in which there shall be entered all the resolutions which refer to the progress and business transactions adopted at the general meetings and at those of boards of directors.

ART. 34. They may furthermore keep other books that they consider advisable according to the system of bookkeeping adopted.

Such books shall not be subject to the provisions of article 36, but any books which may be considered proper may be legalized.

ART. 35. Merchants may keep their books in person or have them kept by a person whom they authorize for the purpose.

If the merchant does not personally keep his books, it shall be presumed that authority has been granted to the person who does keep them, unless there is proof to the contrary.

ART. 36. Merchants shall present the books referred to in article 33 bound, ruled, and folioed, to the justice of the peace of the municipality where they have their commercial establishments, in order that he may put on the first page of each one a signed memorandum of the number of pages contained in the book.

The seal of the justice of the peace which authenticates them shall, moreover, be stamped on all the sheets of each book.

The code further gives detailed instructions as to the manner of keeping, and making entries upon, books of account in article 37 *et seq.* It also requires that—

ART. 49. Merchants and their heirs or successors shall preserve the books, telegrams, and correspondence of their business in general for the entire period which it may continue in existence, and until five years after the liquidation of all their commercial transactions and business.

In the explanatory note to the Spanish Code of Commerce of 1885, which has been extended to the Islands with certain modifications made necessary by local con-

ditions by a Royal Decree of August, 1888, the sponsor of the bill, the Minister, Sr. Alonso Martinez, said in reference to account books and accounting:

Taking into account that books of commerce constitute one of the principal means of proof in mercantile matters, since in entering a transaction in his books a merchant becomes the attorney in fact of the other contracting party, and the book reciting such transaction is a title common to both parties, and taking further into account the propriety of harmonizing the new methods adopted by commerce in keeping books with the existing law, which in some points is defective and even unjust, the bill has made reformations of great utility in this important matter.

The first of them is that imposing on mercantile associations and companies the duty of keeping necessarily, besides the ordinary books of merchants, and those required by special laws, another book called the Book of Minutes whereupon there will be spread verbatim all such resolutions adopted under proper authority at general meetings or by the councils of administration of said companies as refer to corporate transactions and business. While well administered associations generally use to keep minute books, entries and resolutions therein entered lack the probative force attached by the Code to other commercial books, although they deserve it as well as the latter, and their importance is even greater in view of the fact that large interests may be affected by the resolutions adopted. To fill in this gap the bill requires for minute books which will hereafter be kept by companies the same external formalities and requirements as are required for other commercial books, whereby they will obtain the same evidenciary force as the latter when kept in accordance with legal requirements.

The bill also maintains the right now enjoyed by merchants to keep, besides those books which may be considered necessary or fundamental, such other books as they may deem proper, according to the greater or smaller complexity of their business and the bookkeeping system adopted by them, but such books which ought to be only a reflection or amplification of the necessary ones will not be subject to the formalities and

requirements of these latter books, nor will they have the effect ascribed to the same by the bill, it being, however, discretionary for merchants and partnerships to legalize such additional books as they may choose which, once so legalized, will produce the same effects.

The duty to keep account books reaches all merchants, even though they cannot write, and to this effect and to avoid any pretext and expenditure, the bill raises to the category of a legal presumption what is common and constant in the daily practice, that is, that whenever a merchant does not himself keep his books, it will be presumed that authority has been conferred upon the person who is actually keeping the same unless the contrary is shown.

For the compliance with this duty the Code now in force imposes two different sanctions, one of a penal character consisting in the payment of a fine, and the other of a civil nature only which affects a merchant in case of litigation with another merchant, or of being declared bankrupt. The bill omits the former as oppressive to commerce and preserves the latter which is a sufficient guaranty for the faithful compliance with a precept so essential to all merchants who are concerned more than anybody else with deserving the reputation always accorded to a person who proceeds regularly and accurately in all his acts and transactions.

Further, in order that the letter-copying book may be kept with the rapidity allowed by modern inventions and be completed by the new method of communication due to electricity, article 58 of the present Code has been suppressed. According to this article, letters shall be copied without leaving blanks or intervening blank spaces. By the suppression of this article there is sanctioned the tacit repeal thereof by the practice which has long ago admitted the use of mechanical copying devices. The bill also provides that telegraphic dispatches issued by a merchant in the course of his business be also wholly transcribed in the copying book.

Books of account being so important, the bill could not but adopt the external formalities and requirements provided by the Code in force in order to secure the authenticity of said books, and its doctrine has for this reason been substantially reproduced, although it has been modified in certain particulars, as, for example, in the manner of correcting errors

and omissions in order to remedy any defect or irregularity that may attract suspicion to the veracity of the contents of their entries.

And keeping in mind that the purpose of mercantile accounting is to resume all business transactions so that their details being recorded with the greatest possible accuracy, the general results appear at a glance, the bill likewise reproduces the Code's doctrine as to the manner of keeping the book of inventories and balances, the daybook, and the ledger, completing the same with some rules tending to facilitate compliance with the existing provisions, to maintain due order in the writing of entries, to secure exactness of their contents, and to attain the most perfect conformity among those related to the same transaction entered in several books, all of which rules are founded on good commercial practice and the results of experience.

In respect of the authority to be granted to book entries, the bill, while substantially adopting the doctrine of the Code, makes important changes in articles 42 and 45 thereof. To such an end it takes into consideration that article 42 gives an excessive faith to books regularly kept if in opposition to other which is defective or irregular, the latter being deprived of any legal value. This is unjust inasmuch as external regularity consisting in books being sealed and signed by the judicial authority and written neatly and accurately does not exclude lack of exactness or falsity in the entries' contents. The bill has further taken into consideration that article 45 imposes a very severe penalty on a merchant who does not keep any of the books prescribed by the Code, because he who does not like or is unable to produce account books will indeed find himself in an unfavorable condition before his adversary, but such a condition is not enough to attach an absolute faith to the latter's books. The injustice of the present Code becomes much more apparent if account is taken of the fact that it makes no distinction between a merchant who acts in good faith and one who proceeds in bad faith, between one who keeps no books at all for reasons independent from his own will and he who does not exhibit any purposely or because he neglects to keep any, rendering them all equal as though they have violated the law in the same manner.

Such grave defects are remedied by the provisions to this effect contained in the bill. According to them, a merchant who shall not keep his books in due form, or who shall not present any books on account of his own negligence shall be adjudged in a litigation with another merchant in conformity to the latter's books, to which full credit shall be given, if duly kept, so far as nothing to the contrary be shown by any competent evidence. If a merchant cannot present account books for reasons other than his own negligence, and also when in the books presented by both parties there are contradictory entries upon the point in issue the court shall determine it according to the rules of evidence.

As is seen, the framers of the Spanish Code of Commerce, in providing so minutely for the manner in which books of account shall be kept by merchants, had in view their evidenciary nature and the protection of the mercantile class and the general public, considering said books the same as deeds and other public documents in which public faith is reposed. To add to such regulations others concerning the languages in which they shall be written, as the Philippine Legislature did by Act No. 2972, seems to fall within the scope of said regulations.

4. To the Spanish legislator such a requirement was altogether useless. The Spanish Code of Commerce was adopted for Spaniards and Spanish subjects, and there was no need to expressly require that books of account be kept in the Spanish language. That went without saying. As for foreign merchants doing business within the Philippine territory our Code provides:

ART. 15. Foreigners and companies created in a foreign country may engage in commerce in the Philippine Islands, subject to the laws of their country in so far as their capacity to contract is concerned; and in all that refers to the creation of their establishments within the Philippine territory, *their commercial transactions*, and the jurisdiction of the courts of this country, the provisions of this Code govern.

So, before the enactment of Act No. 2972, foreign merchants were virtually required to keep their books of account in the Spanish language, because they were subject in their commercial transactions to the provisions of a code designed for Spanish subjects and containing no express exception in favor of foreigners as to the use of their native languages in their account books.

Moreover, according to the Spanish legal tradition, books of account must be written in the Spanish language, and this is a further explanation of the silence of the present Code of Commerce as regards the use of the Spanish language in account books. There is in the *Novísima Recopilación* the following provisions:

> All banks and public exchanges and merchants and any other persons, whether natives or foreigners, who trade within or without these kingdoms are required to have and record their accounts *in the Castilian language* in their cash and day books by debit and credit, in the order in which they are kept by the natives of our kingdoms; they shall record the money received and paid, declare in what coin the same is received and paid, to which persons, giving their residences, so that by means of such books they may give account of how and in what money they have paid for merchandise brought from foreign kingdoms, and at which rates they have fixed the exchanges made by them to take effect without these kingdoms; and such books shall not be turned over or sent to their principals or partners in their original form but a translation of the same, in order that when they are required to render account they may be able to do so; and said foreign merchants shall keep all their account books, whether of memories or of fairs, or of any kind whatsoever relative to business, *in the Castilian tongue.*[1]

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[1] Todos los bancos y cambios públicos y los mercaderes y otras cualesquier personas, ansi naturales como extranjeros, que trataren ansi fuera de estos reynos como en ellos, sean obligados a tener y asentar la cuenta *en lengua castellana* en sus libros de caxa y manual, por debe y ha de haber, por la orden que los tienen los naturales de nuestros reynos; asentando el dinero que recibieren y pagaren, declarando en que moneda lo reciben y pagan, y a que personas, y donde

All merchants and traders doing wholesale or retail business in these my kingdoms and seigniories, be they natives or aliens, shall keep and have their books *in the Castilian language.*[2]

Article 54 of the Spanish Code of Commerce approved May 30, 1829, provided:

ART. 54. Books of commerce shall be kept in the Spanish language. Any merchant who shall keep them in other language, whether foreign or a Spanish dialect of any province of the kingdom, shall be punished by a fine not less than one thousand "reales" and not more than six thousand; a translation shall be made into Spanish at his expense of the entries of the book ordered revised and verified, and he shall be compelled by the legal means to translate into Spanish, in a term which shall be fixed, the books kept by him in other language.

Commenting on the above article, the Spanish author Estasen says:

Neither was the provision contained in article 54 of the old Code relative to the keeping of books of commerce in the Spanish language anything new in our laws, although the old ones provided that such books be kept in the Castilian language, and the Code of Commerce, in saying "Spanish language," might cause the Basques to keep their books in Basque, and the Catalans in Catalan, believing the same to be Spanish language and that thus they are complying with the law, whereas the idea of the law-framer was that such

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son vecinos, para que por los dichos libros puedan dar cuenta de como y en que han pagado las mercaderias que traxeren de reynos extraños, y a como han proveido el valor de los cambios que hobieren hecho para fuera de estos reynos, y que los tales libros no se puedan entregar ni enviar originalmente a sus compañeros ni mayores, sino el traslado de ellos, para que cuando les fuere pedida cuenta puedan dar; y que los dichos mercaderes extranjeros tengan los libros todos que sean de sus cuentas, asi de memorias como de ferias, como de otras cualesquiera condición que sean, que tocaren a negocios, *en lengua castellana.* (*Ley 12, tit. 4.° Lib IX, Nov. Recop.*)

[2] Todos los mercaderes y comerciantes de por mayor y menor de estos mis reynos y señorios, sean naturales o extranjeros, lleven y tengan sus libros *en idioma castellano.* (*Ley 13, tit. 4.°, Lib. IX Nov. Recop.*)

books be written in the Spanish (Castilian) language. (*Estasén, Instituciones de Derecho Mercantil, Vol. 2, p. 126.*)

Evidence to the effect that the Spanish Code of Commerce implicitly requires that books of account be kept by merchants in the Spanish language is furnished by many Latin-American republics, which, while greatly influenced in framing up their political organizations by the Constitution of the United States (*Decision, at p. 1183, Transcript of Record*), thought it fit to retain all or most of the substantive laws of their mother country. The provisions of the codes of commerce of the aforementioned South-American countries contained in Exhibits 12 (*a*) to 12 (*e*) (*pp. 1038–1054, Transcript of Record*) show that their legislatures understood that the borrowed Spanish Code of Commerce requires tacitly that books of account be kept in the Spanish language, and to avoid probably any misunderstanding in the matter, they inserted express provisions to the effect in their codes of commerce, substantially adopting the wording of the above-quoted article 54 of the Spanish Code of Commerce of 1829.

However it may be, the policy adopted by such enlightened nations as Bolivia, Chile, Colombia, Ecuador, Guatemala, Honduras, Mexico, Salvador, Uruguay, and Venezuela in the American continent, and by France and Servia in Europe, in regard to the use of national languages in merchants' books of account, may at least justify the action taken by the Philippine Legislature in the matter. In Muller v. Oregon, 208 U. S. 412, 420–421, this Court, speaking through Mr. Justice Brewer, accorded to foreign legislation due weight in the following language:

> The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to

us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge.

In Block v. Hirsh, 256 U. S. 135, 158, Mr. Justice Holmes said:

> Assuming that the end in view otherwise justified the means adopted by Congress, we have no concern of course with the question whether those means were the wisest, whether they may not cost more than they come to, or will effect the result desired. It is enough that we are not warranted in saying that legislation that has been resorted to for the same purpose all over the world, is futile or has no reasonable relation to the relief sought. (*Chicago, Burlington & Quincy R. R. Co. v. McGuire, 219 U. S. 549, 569.*)

From the foregoing it may therefore be concluded that since the Code of Commerce in force in the Philippines virtually requires that books of account be kept in the Spanish language, Act No. 2972 may be considered as a mere amendment to such implicit requirement in the sense that because the English language and native dialects, together with the Spanish, have been accorded official recognizance, books of account ought to be written in all those languages and dialects. We submit that inasmuch as the Philippine Code of Commerce together with other codes of Spanish origin in force in these Islands have been tacitly approved by Congress,

any taint of unconstitutionality in Act No. 2972 is removed by the doctrine laid down by this Court in Public Utility Commissioners v. Ynchausti & Co., 251 U. S. 401.

Petitioners assert, however, that Act No. 2972 is an attempt to destroy an important class in the community, since the 12,000 Chinese merchants in the Philippine Islands can not afford to use but their own language in their books of account. This allegation is not borne out by the facts proven in the present case. It appears from the evidence, and so found by the lower court, that two-thirds of said Chinese merchants are able to keep their books of account in either English or Spanish. The remaining 4,000 Chinese were given two years in which to prepare themselves for the new situation created by the law. It is also a fact that practically all of the Chinese merchants do comply with the requirement of the Bureau of Internal Revenue to keep sales books, and for those of said 4,000 Chinese merchants who have not to pay the income tax, such sales books are sufficient to comply with the law. And it should also be borne in mind that not all of the said 4,000 Chinese merchants must keep account books since not all of them have to pay the percentage tax.

Section 1459 of the Administrative Code provides:

SEC. 1459. *Percentage tax on merchants' sales.*—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, * * *

The following shall be exempt from this tax:

(*a*) Persons engaged in public market places in the sale of food products at retail, and other small merchants whose gross quarterly sales do not exceed two hundred pesos.

(*b*) Peddlers and sellers at fixed stands of fruit, produce, and food, raw or otherwise, the total selling value whereof

does not exceed three pesos per day and who do not renew their stock oftener than once every twenty-four hours.

(*c*) Producers of commodities of all classes working in their own homes, consisting of parents and children living as one family, when the value of each day's production by each person capable of working is not in excess of one peso.

The other allegation of petitioners is that Act No. 2972 seeks to deprive Chinese merchants from their right to use their own language in private commerce. Nowhere in Act No. 2972 is there any provision prohibiting the use of foreign language in private business. The scope of the Act is restricted to bookkeeping; it does not cover the whole field of business transactions. Needless to say, the business of foreign merchants is not to keep books of account only; this is a mere incident to their real business. They can, as heretofore, transact business in any language they may choose; they are only required to keep a record of their business in the languages or dialects mentioned in the Act. Chinese merchants are not discriminated against on account of their nationality; all foreign and native merchants are equally treated by the Act.

Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the (fourteenth) amendment. (Barbier v. Connolly, 113 U. S. 27, 32.)

There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. (Middleton v. Texas Power and Light Co., 249 U. S. 152.)

The Fourteenth Amendment is not a pedagogical requirement of the impracticable. The equal protection of the laws does not mean that all occupations that are called by the same name must be treated in the same way. The power of the

State "may be determined by degrees of evil or exercised in cases where detriment is specially experienced." *Armour & Co.* v. *North Dakota, 240 U. S. 510, 517.* (Dominion Hotel v. Arizona, 249 U. S. 265, 268.)

The same view was adopted by the Philippine Supreme Court in Kwong Sing v. City of Manila, 41 Phil., 103.

The Philippine Legislature, in approving Act No. 2972, did not choice, among the various languages spoken the world over, the English and Spanish languages and the Philippine dialects but simply adopted these languages and dialects for a fiscal measure because they are the official ones and known, therefore, to the Government officers and employees. It was not its aim to favor certain foreigners to the detriment of others, and the coincidence of the official languages with those spoken by some foreign residents is an unavoidable fact antedating the adoption of Act No. 2972, and which no power on the earth can either remedy or change.

There is no question but that aliens in foreign territory are at liberty to use their own languages in private business, but, as aforesaid, bookkeeping is not only a private business. Bookkeeping is also a matter of public concern. Neither the Federal Constitution nor the Philippine Bill of Rights guarantees to any foreigner the untrammeled use of his native language in bookkeeping, nor has Congress ever expressed in its enactments any intention to legislate upon local matters such as bookkeeping.

In an air of triumph, petitioners cite the cases of Meyer v. Nebraska, 262 U. S. 390, and The King v. Liau Kiu, 7 Hawaii, 498. The application of these cases to the present one is very doubtful. In the case of Nebraska, as is known, teachers of foreign languages were deprived of their constitutional right to engage in a lawful occupation such as the teaching of foreign lan-

guages. The right of school children to acquire useful knowledge, and that of their parents to bring them up and give them education suitable to their station in life were also denied by the Act in question in the Nebraska case. No similar deprivation of rights is attempted by Act No. 2972. This Act does not deprive the petitioners of their right to engage in commerce and trade; it only requires that their native language be not used in their books of account since these books are also books of the Government which by virtue of its sovereign powers and of its paramount right to depend upon taxation for its life may dictate to merchants in what language such books are to be kept. If any persons could complain of Act No. 2972, they are the Chinese bookkeepers. But no Chinese bookkeeper is among the petitioners, and, on the other hand, even with Act No. 2972 Chinese bookkeepers may, as heretofore, engage in their occupation. Far from depriving any person of any constitutional right, Act No. 2972 indirectly fosters the knowledge of useful languages such as the English and Spanish, to say nothing of local dialects so useful to a large number of Chinese merchants who are the distributors of American and foreign products among the native population.

As to the Hawaiian case, it will be remembered that the purpose of the law which was the subject of the decision in that case was, as set forth in its preamble, "to prevent the future perpetration of frauds," that is, to protect creditors. Act No. 2972 is a fiscal measure purporting to insure uniformity, facility, and exactness in the collection of merchants' taxes. While the Hawaiian law could not have prevented fraud against private creditors since, as the court rightly said, fraud may be committed in any language, by Act No. 2972 any fraud against the Government revenue can be easily detected. Moreover, the Hawaiian law was

pronounced unconstitutional because it in fact deprived wholesale and retail merchants of their right to engage in business since license to do so could be denied or revoked should the condition that the licensee keep his books of account in English, Hawaiian, or some European language be not accepted or complied with. Act No. 2972 imposes no condition on merchants in the pursuance of their business. Foreign and other merchants are free to keep or not to keep any account books. Even though the Code of Commerce requires that certain books be necessarily kept, a merchant who does not keep any book at all cannot be criminally prosecuted. (*Decision of the Supreme Court of Spain of February 10, 1879.*) Furthermore, nothing prevents a foreign merchant to keep books of account in his native language in addition to those required by Act No. 2972 to be kept in the official languages and Philippine dialects, for there is no prohibition to the effect in the Act, and article 34 of the Code of Commerce expressly authorizes the keeping of other books besides those mentioned in its article 33. After all, as shown by the evidence in this case, all the Chinese and other foreign merchants are able to keep the sales books required by the Bureau of Internal Revenue, which books, as stated in Young v. Rafferty, *supra*, are simplicity itself. If merchants cannot afford to conduct their business without books of account, such Chinese and other foreign merchants as are not exempted by section 1459 of the Administrative Code from the percentage tax may well keep books in their native language together with the aforesaid sales books and thus comply with the law without any detriment to their business.

Other cases are cited and commented upon by the petitioners. All of them are, in our opinion, inapplicable to the case at bar. In the case of Pierce v. So-

ciety of Holy Names (17 Adv. Op., October Term, 1924, p. 688) children of school age were prohibited to attend private schools thus interfering with the constitutional right of their parents and guardians "to direct the upbringing and education of children under their control," and destroying the business of owners of private schools. The use of his native language by a foreign merchant in his account books is not among the rights which cannot be deprived without infringing upon the Constitution. The Government by its police and taxing power, as aforesaid, can lawfully prohibit the use of foreign languages in bookkeeping which is a matter affected by a public interest.

Truax v. Raich, 239 U. S. 33, is a case entirely different from the present. In that case foreign workers were deprived of their means to earn a livelihood merely because of their race or nationality. Act No. 2972 does not deprive foreign merchants of their right earning a livelihood for any reason whatever. That is an exaggeration of the effect and operation of the Act. The requirement that a language unknown to some of the 4,000 Chinese merchants who cannot understand bookkeeping in such language is likely to cause some initial embarrassment, for which they are to blame since they were given a term of two years for adjusting themselves to the new conditions, but would not drive them altogether out of business. It is significant in this connection that while in the beginning such would be the probable result of the Act upon a relatively small group of Chinese merchants, other foreign merchants similarly situated, as, for example, Japanese and Hindu owners of small godowns and retail stores, have not complained of the Act.

Adams v. Tanner, 244 U. S. 590, is also a different case. The subject of said case was a prohibition to employment agents from requiring a charge from per-

sons seeking for employment. The right to collect a charge for service rendered is of course one which cannot be denied. Without a demand for remuneration employment agencies could not succeed and must be abandoned. And requiring a Chinese merchant to keep his books of account in a language unknown to him might force him to abandon his business. But such is not the situation of any Chinese merchant in the Philippines. According to the very testimony of the Chinese witnesses in this case, Chinese merchants have been residing in the Islands for many years, and it is odds that they cannot generally understand foreign bookkeeping. At any rate, those who are affected by the Act, not exceeding 4,000 in number, are all able to keep the sales books required by the Bureau of Internal Revenue, and furthermore small retail shops do not necessarily require the service of a bookkeeper.

Atchison & State Railway v. Vosburg, 238 U. S. 56, was a case where a state statute imposed reciprocal burdens on both carrier and shipper, and provided that "in case of delinquency on the part of the carrier the carrier may recover an attorney fee but in the case of delinquency on the part of the shipper, it did not provide that the carrier might recover an attorney fee." This was certainly an unreasonable classification which denied carriers the equal protection of the law. But by Act No. 2972 all merchants, whether natives or foreigners, are required to keep their books of account in English, Spanish, or a native dialect. No classification is made of foreign merchants, and the fact that there are foreign merchants having for their own languages those mentioned in the Act is an advantage for them but does not constitute the basis of any classification.

In Coppage v. Kansas, 236 U. S. 1, a statute declared it to be a misdemeanor for an employer to require an

employee to agree not to become or remain a member of any labor organization during the time of his employment. Upon the facts of the case, the court held that such statute was repugnant to the due process of law. No similar requirement is to be found in Act No. 2972. In that case, Mr. Justice Pitney, speaking for the Court, said:

> But, in our opinion, the Fourteenth Amendment debars the States from striking down personal liberty and property rights, or materially restricting their normal exercise, *excepting so far as may be incidentally necessary for the accomplishment of some other and paramount object, and one that concerns the public welfare.*

In Burns Baking Co. v. Bryan, 264 U. S. 504, the Court ruled that the minimum and maximum weights of loaves of bread to be made or offered for sale was an unreasonable and arbitrary interference with private business, and in fixing maximum weights was not calculated to protect purchasers from fraud. Act No. 2972 is, however, a necessary interference with private business in one of its aspects, the keeping of books of account. Requiring that such books be kept in the languages mentioned in the Act is neither unreasonable nor arbitrary for they are the only languages known to the Government, and it can be generally complied by foreign merchants, although it would prove a burden to a few Chinese merchants. That the private convenience of a small portion of the community must yield to governmental convenience in the all-important question of the latter's subsistence is a self-evident proposition.

The case of Lee Sing, 43 Fed. 359, is another case which cannot be compared with the case at bar. In that case, an ordinance of the City of San Francisco arbitrarily required all Chinese inhabitants to remove from an area to another. That was evidently a deprivation of the liberty of those Chinese to dwell where they might

please within the city. In the present case, however, the deprivation of the use of foreign languages in merchants' books of account is made necessary for the protection of the Government itself against frauds and evasions in the payment of taxes in which it is vitally concerned.

In Yick Woo v. Hopkins, 118 U. S. 356, an ordinance conferred upon the municipal authorities the power, at their own will, to grant or deny licenses for public laundries, without regard to the competency of the applicant or the propriety of the place selected. It was also found in that case that the ordinance was applied by said authorities by making arbitrary and unjust discriminations founded on differences of race between persons otherwise in similar circumstances. The subject of the present case is not the application of Act No. 2972 by the executive officers, and the Act is applicable to all merchants, whether Chinese or not.

In Mugler v. Kansas, 123 U. S. 623, this Court said that "courts are not bound by mere forms, nor are they to be misled by mere pretences" (p. 661), but are at liberty to look at the substance of things in inquiring whether the legislature has transcended the limits of its authority. But the form, substance, and purpose of Act No. 2972 are nothing more nor less than to protect and facilitate the collection of Government revenues. It is not intended for the Chinese only, although they constitute the larger portion of the business community. A Japanese, a German, an Italian, a Syrian merchant who violates its provisions is as amenable to prosecution as a Chinese violator thereof. To see beyond the plain language of the Act an occult design against Chinese merchants is but an unfounded suspicion. That the Legislature in the exercise of its constitutional powers was justified in approving Act No. 2972 is shown by the

following quotations from the License Cases (5 How. 504) made in the Mugler case at page 658:

Mr. Justice McLean, among other things, said: "A State *regulates its domestic commerce*, contracts, the transmission of estates, real and personal, and *acts upon all internal matters which relates to its* moral and *political welfare. Over these subjects the Federal Government has no power* . . . The acknowledged police power of a State extends often to the destruction of property. A nuisance may be abated. Everything prejudicial to the health or morals of a city may be removed." (Pp. 588, 589.) Mr. Justice Woodbury observed: "How can they (the States) be sovereign within their respective spheres, without power to regulate *all their internal commerce*, as well as police, and direct how, when, and where it shall be conducted in articles intimately connected either with public morals, or public safety, or the public prosperity?" (p. 628).

In Pennsylvania Coal Mining Co. v. Mahon, 260 U. S. 393, this Court held that a statute prohibiting mining under certain circumstances would impair contract rights. In the present case there is not even an intimation that Act No. 2972 would impair contract rights.

In Buchanan v. Warley, 245 U. S. 60, an ordinance was held unconstitutional which forbade colored persons to occupy houses in blocks where the greater number of houses were occupied by white persons. Certainly, the ordinance discriminated against colored people on account of their race. But Act No. 2972 is not aimed at Chinese only and on account of their race. The fact that the English, Spanish, and native dialects are spoken by the majority of the inhabitants of the Islands was not the basis for their adoption as the languages to be used in books of account, as aforesaid.

Guinn & Beal v. United States, 238 U. S. 347, was a case in which an amendment to the Constitution of Oklahoma was declared void because it violated the Fifth Amendment to the United States Constitution.

Reasoning out his conclusions, Chief Justice White incidentally said that a mere form of expression must not prevail over the operation and effect of a statute which in substance denied a negro voter his right of suffrage. In Act No. 2972 no constitutional rights will be infringed on account of the race of the offender because, as repeatedly said, it covers all merchants. If because it may happen that in a community a certain mass of foreigners is more numerous than others, the legislative power could not legislate upon a matter which concerns the government, simply because the burden to be imposed will fall mainly upon the shoulders of said greater number of foreigners, or because it may be suspected to discriminate against the same, then a privileged intangible class will be constituted by said foreigners, and any measure restricting their activities for the protection of the government itself must be held unconstitutional. A community in which foreigners would have such a privilege and could prevail over the government could not be said to be governed by principles of reason and justice.

In Bailey v. Alabama, 219 U. S. 219, this Court held that, even without an apparent motive to oppress, a statute which in its operation brings about such a result should be held void. Much has been exaggerated in the case of the Chinese merchants in connection with the operation of Act No. 2972. As aforesaid, the testimony shows that two-thirds of said Chinese merchants can easily comply with the Act. Of the remaining one-third, all can keep the sales books required by the Bureau of Internal Revenue, which is enough for a proper compliance with the law. As the lower court aptly said:

> The law will prove oppressive to the extent that all tax laws are oppressive, but not oppressive to the extent of confiscation. The means to accomplish a necessary interference with private business are no more oppressive upon individuals than is ne-

cessary to maintain the State. The law is not intended for the creditors, but has relation to the public welfare, to the power of taxation, to the right of the Government to exist. The Chinese must bear their just proportion of the tax burden, however unwelcome it may be, without flinching. (*Decision at p. 1201, Transcript of Record.*)

The case of Quong Wing v. Kirkendall, 223 U. S. 59, is a case which rather upholds the contention of respondents for there Mr. Justice Holmes said:

A State does not deny the equal protection of the laws by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry. Like the United States, although with more restriction and in less degree, a State may carry out a policy, even a policy with which we might disagree. *McLean* v. *Arkansas*, 211 U. S. 539, 547. *Armour Packing Co.* v. *Lacy*, 200 U. S. 226, 235. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 562. It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, as was illustrated in *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 92, 95; *Williams* v. *Fears*, 179 U. S. 270, 276; *W. W. Cargill Co.* v. *Minnesota*, 180 U. S. 452, 469. (Pp. 62, 63.)

5. Act No. 2972 is a lawful exercise of the police power. In its broadest sense, this power has been defined to embrace not only regulations having for their object the protection of public health, morals, and safety but also to be practically synonymous with the reserved powers of sovereignty. In the License Cases, 46 U. S. 504, 582, Chief Justice Taney said:

But what are the police powers of State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominion. And whether a State passes a quarantine law, or a law to punish offences, or to establish courts of justice, or requiring certain instruments to be recorded, or *to regulate commerce within its own limits*, in every case it exercises the same powers; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of

this power that it legislates; *and its authority to make regulations of commerce is as absolute as its power to pass health laws,* except in so far as it has been restricted by the Constitution of the United States.

In Sligh v. Kirkwood, 237 U. S. 52, 59, Mr. Justice Day said:

The police power, in its broadest sense, *includes all legislation* and almost every function of civil government. *Barbier* v. *Connolly*, 113 U. S. 27. It is not subject to definite limitations, but *is coextensive with the necessities of the case and the safeguards of public interest. Camfield* v. *United States*, 167 U. S. 518, 524.

Late Chief Justice White, in Dakota Central Tel. Co. v. South Dakota, 250 U. S. 163, 185, also said:

It was conceded that the words "police power" were susceptible of two significations, *a comprehensive one embracing in substance the whole field of state authority* and the other a narrower one including only state power to deal with the health, safety, and morals of the people.

In Miller v. Board of Public Works (Cal., 1925), 234 Pac. 381, 38 A. L. R. 1479, the court said:

In its inception the police power was closely concerned with the preservation of the public peace, safety, morals, and health, without specific regard for the "general welfare." The increased complexity of our civilization and institutions later gave rise to cases wherein the promotion of the public welfare was held by the courts to be a legitimate object for the exercise of the police power. As our civil life has developed so has the definition of "public welfare" until it has held to embrace regulations "*to promote the economic welfare and general prosperity of the community.*" Chicago, B. & Q. R. Co. v. Illinois, *supra*. Thus it is apparent that the police power is not a circumscribed prerogative, but is elastic, and in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life, and thereby keep pace with the social, economical, moral, and intellectual evolution of human race. In brief, "there is no-

thing known to the law that keeps more in step with human progress than does the exercise of this power" (Streich v. Board of Education, *supra*), and that power "may be put forth in aid of what is sanctioned by usage, or *held by* the prevailing morality or *strong and preponderant opinion to be greatly and immediately necessary to the public welfare.*" (Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 32 L. R. A. (N. S.) 1062, 31 Sup. Ct. Rep., 186, Ann. Cas. 1912A, 487.)

The police power *includes all regulations designed to promote the public convenience, general welfare, and general prosperity, and extends to all great public necessities,* as well as regulations designed to promote the public health, the public morals, or the public safety. (State v. Pitney, 140 Pac. 918, 79 Wash. 608, Ann. Cas. 1916A, 209.)

It cannot be gainsaid that the Legislature, in approving Act No. 2972, properly exercised the state police power in its broadest sense. Likewise, it cannot be gainsaid that, in such exercise of its police power, the Philippine Government intended to remedy a great public necessity, and the means adopted by it is not unreasonable, arbitrary, or oppressive, as already shown, but necessarily required by the circumstances of the case. And while each country has plenary power to legislate according to its conception of public welfare (Petersen v. Iowa ex rel. State Treasurer, 245 U. S. 170).

A court has not right to invalidate or overthrow legislation depriving a person of his liberty or property * * * unless it is palpably clear that it has no real and substantial relation to the public welfare; the right to determine what such welfare demands being primarily in the legislature or local assembly, and every presumption being in favor of its rightful exercise. (Grainger v. Douglas Park Jockey Club, 148 Fed. 513, 8 Ann. Cas. 997.)

It is also well settled that the due process clause of the Fourteenth Amendment does not restrain the States in the exercise of their legitimate police power. (Pacific Gas & E. Co. v. Police Court, 251 U. S. 22.)

6. Act No. 2972 was undoubtedly enacted for reasons of public policy. This being so, the legislative judgment in the choice of adequate means to effectuate such a policy cannot be superseded or substituted by the judicial judgment. In McCulloch v. Maryland, 4 Wheat. 316, 421, Chief Justice Marshall said:

> The sound construction of the constitution must allow to the national legislature that discretion with respect to the means by which the power it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people.

Why should such a discretion be denied a territorial legislature, if in matters relative to public policy, public convenience, revenue, and taxation it stands upon the same footing with the states and even the national government? This Court has held that—

> When a State exerting its recognized authority undertakes to express what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. (Purity Extract Co. v. Lynch, 226 U. S. 192.)

> But a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect. (Block v. Hirsh, *supra.*)

> Questions of policy are not submitted to judicial determination, and the courts have no general authority of supervision over the exercise of discretion which under our system is reposed in the people or other departments of government. *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219, U. S. 549, 569; *German Alliance Insurance Co.* v. *Lewis*, 223 U. S. 389. (Green v. Frazier, 253 U. S. 233, 240.)

> "But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or be convinced of the wisdom of its exercise." It is enough if the legislation be passed in the exercise of a power of government and has relation to that power. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 365.

366, and cases cited; also *Bunting* v. *Oregon*, 243 U. S. 426, 437. (La Tourette v. McMaster, 248 U. S. 465, 468.)

The following are well established doctrines in the matter:

The Fourteenth Amendment to the Constitution of the United States does not interfere with the proper exercise of the police power of the several states. * * * *By its enactment it was not intended to deprive government of powers so essential to its existence* and so closely interwoven in the social fabric. * * * (6 R. C. L. 195–199.)

The police power extends to the enactment of laws which promote the public welfare, as distinguished from the interests of a particular class. The power of the legislature in this respect is *very great*, and *its discretion in the employment of means* to that end *is very large*, and it may enact laws to preserve and promote the public welfare, *even at the expense of private rights.* In the exercise of the police power *the legislature may prohibit all things* hurtful to the welfare of society, or *detrimental to the public interests.* * * * (6 R. C. L. pp. 210, 211.)

7. Act No. 2972 is not unreasonable nor arbitrary. To the reasons already advanced in support of our contention as to the reasonableness of the Act it may be added the testimony of the Collector of Internal Revenue, Mr. Juan Posadas, Jr., whose long administrative experience and practical knowledge of facts connected with the collection of taxes are worthy of consideration. His testimony is in part as follows:

Q. If the books of account, not only of the Chinese merchants, but of the other foreign merchants, were kept in their own languages and not in English, Spanish, or some local dialect, would it be possible to have the books of account of these merchants audited by the agents and employees of the Bureau of Internal Revenue?

* * * * * * *

A. It would be impossible, unless our office had a personnel sufficiently numerous and competent to make the audits

of the books of account in the different languages in which they were kept.

Q. Has the Bureau of Internal Revenue that sufficient and competent personnel to audit the books of account of merchants who do not keep their books in Spanish, English, or some local dialect?

A. No, sir, we have only an insignificant number of Chinese accountants to make examinations of the books of the Chinese merchants.

Q. And as to the books of account of the other merchants who do not keep their books in English, Spanish, or some local dialect—the other merchants who are not Chinese?

A. No, sir, we have not at present any personnel for that.

Q. If the Bureau of Internal Revenue were not able—as according to you it is not able—to examine properly the books of account of merchants who do not keep their books in English, Spanish, or some local dialect, and the case arose that those merchants who do not keep their books in the languages permitted by Act No. 2972 should pay the full amount of taxes due to the Internal Revenue, even though they were acting in good faith—could such a case occur?

* * * * * * *

A. Yes, sir, because judging from the audits even of those books of account which are intelligible to the office personnel, the office has found many differences or items not declared for the purpose of taxation.

Q. In the case of banks, had it occurred at any time that they have had to pay taxes in excess of the amounts declared by them?

* * * * * * *

A. Yes, sir.

* * * * * * *

Q. Can you state, Mr. Posadas, how the proposed law, Act No. 2972, would affect the uniformity of the assessment of taxes which the merchants should pay?

* * * * * * *

A. For the ends of justice and equity in the assessment of taxes, it is very essential that it be uniform. While the Bureau at present can discover errors or omissions or differences which appear in the tax returns of taxpayers who keep their books in a language intelligible to the office, we

cannot do the same so far as concerns other merchants who keep their books in other languages, in view of the fact that we have not the proper personnel for that work. We can only examine a small number of the books of account of the Chinese.

* * * * * * *

Q. Do you know how many cases of merchants were examined in 1922 by the Chinese accountants of the Income Tax Division of your Bureau?

* * * * * * *

A. During that year, the Chinese accountants in the Income Tax Division inspected 477 returns of Chinese.

Q. Books, or returns?

A. Returns of Chinese.

Q. Were those the only returns that could be inspected?

A. By the Chinese accountants, I believe so.

* * * * * * *

Q. Do you know whether there were any under-declarations in those cases that were inspected that you have referred to?

* * * * * * *

A. In the comparison of these returns with the books of account of the interested parties, differences were found which amount to more than ₱600,000 which was not declared.

* * * * * * *

Q. And in what manner have you been inspecting the books of account of the Chinese merchants in the provinces?

A. Ordinarily, our agents make a superficial comparison, having the Chinese themselves read the entries which appear in their books of account, in order to compare them with the returns which they have for tax purposes; and they examine the Bureau of Internal Revenue sales books, with which the greater portion of the Chinese merchants have provided themselves, as a rule.

Q. It is not true that many of these sales books are kept in Chinese characters?

A. As I have stated, the greater part of the Chinese establishments, in addition to their books of account kept in Chinese, also have the Bureau of Internal Revenue sales books, which is kept in Arabic characters.

* * * * * * *

A. The advantage of the Accounting Law, which compels merchants to keep their books in English, Spanish, or some local dialect lies precisely in the fact that it would facilitate the inspection of these books of account by the employees of the Bureau of Internal Revenue, and enable them to check up the taxes which have been paid by the merchants and ascertain whether or not they agree with the transactions actually had. This work is at present being done so far as concerns the merchants who keep their books in languages comprehensible to the Bureau, and to a certain extent it means that these merchants are penalized. On the other hand, it has been almost impossible to do this with regard to those merchants who keep their books entirely in languages not comprehensible to the office, and the net result therefore is that while we can collect differences in taxes due from part of the merchants, it is almost impossible to do so with regard to the other part.

* * * * * * *

Q. But supposing that you had also Chinese accountants competent to act as supervising agents in the provinces, then what advantage would there be in enforcing Act No. 2972?

A. The advantage would consist precisely in the fact that we would avoid the duplication of personnel, because otherwise we would have to duplicate the personnel in each district by employing Filipinos and Chinese.

* * * * * * *

A. To what extent it would be difficult for the Chinese to keep informed as to their transactions in case the books were kept in English, Spanish, or any local dialect, I can't state exactly, but I consider that there would be less difficulties, in view of the fact that the majority of the Chinese merchants in the Philippines have resided here for many years and that they speak English, Spanish, or some local dialect.

* * * * * * *

Q. How would the Chinese merchant, who knows no other language than Chinese, proceed to supervise the keeping of his books in a language unknown to him?

A. I don't believe that the majority of the Chinese merchants in the Philippines are wholly ignorant of Spanish, English, or some local dialect, so that they would not be able

to exercise due supervision of the manner in which their books of account are kept.

Q. But even supposing that the law is not merely for the protection of the majority, but also for the protection of the minority, how would those of the minority proceed who did not have a sufficient knowledge of any language other than their own to inform themselves as to the contents of their books and to supervise the account end of their businesses?

A. I don't believe there exists in the Philippine Islands any Chinese business house in which there are not one or two who know English, Spanish, or some local dialect.

Q. Even to the point of reading and writing it?

A. I believe so.

Q. So that there is not even the minority of which we have spoken?

A. It is very possible that there are some merchants who do not know how to read or write, but among their Chinese employees to whom I refer there will always be one or two who can read English, Spanish or some local dialect.

* * * * * * *

A. I believe that if that minority exists it will not be easy for their bookkeepers to deceive them, inasmuch as those merchants who form that minority know sufficient about the transactions in their respective businesses to make it difficult for the bookkeepers to increase or decrease the amount involved in a given transaction without the merchants themselves becoming aware of it.

* * * * * * *

Q. Assuming that a Chinese merchant who knows no language other than his own should be compelled to have his books kept by a Filipino bookkeeper in Spanish or English, how would you expect him to know whether they were kept correctly or not?

* * * * * * *

A. That would depend upon the merchant himself. I desire to state here that the Chinese merchants pay their taxes to the Government upon the basis of return made in English and Spanish, and I believe that in this respect Chinese have not had much difficulty in filing those returns.

(*Transcript of Record pp. 690–756.*)

II

THE PHILIPPINE SUPREME COURT PLACED A PROPER CONSTRUCTION ON ACT No. 2972.

In spite of its apparently unambiguous language, it cannot be denied that Act No. 2972 is susceptible of various constructions. As the lower court said:

> A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish, or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional.
>
> A second interpretation is that the Chinese merchants, while permitted to keep his books of account in Chinese, must also keep another set of books in either English, Spanish, or a native dialect. The respondents claim the law is susceptible of such construction. It occurs to us, however, that this construction might prove as unsatisfactory as the first. Fraud is possible in any language. An approximation to governmental convenience and an approximation to equality in taxation is the most which may be expected.
>
> A third construction which is permissible in view of the history of the legislation and the wording of the statute, is, that the law only intended to require the keeping of such books as were necessary in order to facilitate governmental inspection for tax purposes. (*Decision at pp. 1197, 1198, Transcript of Record.*)

By adopting a construction which will render constitutional Act No. 2972 the Philippine court has only followed an unbroken line of American decisions upholding its view in the matter. In re Matthews, 109 Fed. 603, 616–618, the court said:

> But Mr. Sutherland, in his work on Statutory Construction, says at paragraph 323:
>
> A construction which must necessarily occasion great public and private mischief must never be preferred to a construction which will occasion neither or not in so great a degree, unless the terms of the

instrument absolutely require such preference. Of two constructions, either of which is warranted by the words of the amendment or the public act, that is to be preferred which best harmonizes the amendment with the general tenor and spirit of the act amended. A statute may be construed contrary to its literal meaning when a literal construction would result in an absurdity or inconsistency, and the words are susceptible of another construction which carries out the manifest intention.

The same author, at section 218, says:

It is indispensable to a correct understanding of a statute, to inquire first: What is the subject of it? What object is intended to be accomplished by it? When the subject-matter is once clearly ascertained, and its general intent, a key is found to all its intricacies. General words may be restrained to it, and those of narrower import may be expanded to embrace it to effectuate that intent. When the intention can be collected from the statute, words may be modified, altered, or supplied so as to obviate any repugnancy, or inconsistency with such intention.

Mr. Justice Field, in the Eureka Case, 4 Sawy. 302, Fed. Cas. No. 4,548, said:

Instances without number exist where the meaning of words in a statute has been enlarged, restricted, or qualified to carry out the intention of the legislature. The inquiry, where any uncertainty exists, always is as to what the legislature intended, and, when that is ascertained, it controls.

* * * * * * *

Decisions might be multiplied on this subject. It is sufficient to say that these cases show that in construing statutes the fundamental rule is to get at the intention of the legislature. Mr. Sutherland says:

No clearer statement has been or can be made of the law as to the dominating influence of the intention of a statute in the construction of all its parts than that which is found in Kent's Commentaries: "In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms, and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context, from the occasion and necessity of the law, from the mischief felt and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion."

Blackstone, in his Commentaries, mentions three things which are to be considered in the construction of all remedial statutes: the old law, the mischief, and the remedy; that is,

how the law stood at the making of the act, the mischief for which the law did not adequately provide, and what remedy the legislature has supplied to cure this mischief. And it is the duty of judges so to construe the act as to suppress the mischief and advance the remedy. This injunction is simply to carry out the intention of the lawmaker, which is the cardinal aim with reference to all statutes. The intention in statutes which are for this purpose recognized as remedial, or enacted *pro bono publico*, is more liberally inferred, and to a greater extent dominates the letter, than is admissible in dealing with those which must be strictly construed.

Mr. Justice Brandeis, in Carey v. South Dakota, 250 U. S. 118, 122, said:

Where a statute is reasonably susceptible of two interpretations, by one of which it would be clearly constitutional and by the other of which its constitutionality would be doubtful, the former construction should be adopted. *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, 422; *Knights Templars' Indemnity Co.* v. *Jarman*, 187 U. S. 107, 205.

In Londoner v. Denver, 210 U. S. 373, 379, Justice Moody said:

We see nothing in the sixth assignment of error. It is apparently based upon the proposition that, in construing a law of the State in a manner which the plaintiffs in error think was clearly erroneous, the Supreme Court of the State exercised legislative power, and thereby violated the Fourteenth Amendment. We are puzzled to find any other answer to this proposition than to say that it is founded upon a misconception of the opinion of the court and of the effect of the Fourteenth Amendment. The complaint in this assignment is not that the court gave a construction to the law which brought it into conflict with the Federal Constitution, but that, in construing the law so as to bring it into harmony with the Federal and state constitutions, the court so far neglected its obvious meaning as to make the judgment an exercise of legislative power. We know of nothing in the Fourteenth Amendment which gives us authority to consider

a question of this kind. We think it fitting, however, to say that we see nothing extraordinary in the method of interpretation followed by the court, or in its results. Whether we should or not arrive at the same conclusions is not of consequence.

In United States v. Delaware & Hudson Co., 213 U. S. 366, 407, Chief Justice White said:

It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. *Knights Templars' Indemnity Co.* v. *Jarman*, 187 U. S. 197, 205. And unless this rule be considered as meaning that our duty is to first decide that a statute is unconstitutional and then proceed to hold that such ruling was unnecessary because the statute was susceptible of a meaning, which causes it not to be repugnant to the Constitution, the rule plainly must mean that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter. *Harriman* v. *Interstate Com. Comm.*, 211 U. S. 407.

III

THE CONSTRUCTION OF ACT No. 2972 BY THE PHILIPPPINE SUPREME COURT IS NOT REVIEWABLE

Numerous decisions may be cited in support of this theory. We will content ourselves with quoting the following:

The construction placed on the constitution and laws of a State by its highest court must be accepted by this court in determining their consistency with the Federal Constitution. (Mr. Justice McKenna in Thornton v. Duffy, 254 U. S. 361, 368.)

But it is elementary that this court is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the State.

Commercial Bank v. *Buckingham*, 5 How. 317, 342; *Johnson* v. *New York Life Insurance Co.*, 187 U. S. 491, 496; *Ross* v. *Oregon*, 227 U. S. 150, 162; *Ireland* v. *Woods*, 246 U. S. 491, 496; *Stadelman* v. *Miner*, 246 U. S. 544; *Erie R. R. Co.* v. *Hamilton*, 248 U. S. 369, 371–382.

True it is elaborately argued that the court below erred in supposing that the statute was susceptible of the construction which it affixed to it, and that, instead of adopting that construction, its duty was to hold the statute void for repugnancy to the Constitution on the grounds which were urged. But this in a different form of statement but disputes the correctness of the construction affixed by the court below to the state statute and assumes that that construction is here susceptible of being disregarded upon the theory of the existence of the discrimination contended for when, if the meaning affixed to the statute by the court below be accepted, every basis for such contended discrimination disappears. It follows that the argument but accentuates the frivolous character of the Federal question relied upon. (Chief Justice White in Quong Ham Wah v. Industrial Comm., 255 U. S. 445, 448–449.)

This court when dealing with the constitutionality of state statutes, challenged under the Fourteenth Amendment, accepts the meaning thereof as construed by the highest court of the State. *St. Louis & Kansas City Land Co.* v. *Kansas City*, 241 U. S. 419. (Mr. Justice Day in Farncomb v. Denver, 252 U. S. 7, 10.)

The questions just stated are questions of local law, and in determining whether the statute violates any right secured by the Federal Constitution we must, in the particulars named, accept the interpretation put upon it by the state court (Justice Harlan in W. W. Cargill Co. v. Minnesota, 180 U. S. 452, 466–467.)

It is well settled that in cases of this kind the interpretation placed by the highest court of the State upon its statutes is conclusive here. We accept the construction given to a state statute by that court. *St. L., I. M. & So. P. Ry. Co.* v. *Paul*, 173 U. S. 404, 408; *M. K. & T. Ry. Co.* v. *McCann*, 174 U. S. 580, 586; *Tullis* v. *L. E. & W. R. R. Co.*, 175 U. S. 348. Nor is it material that the state court ascertains the meaning and

scope of the statute as well as its validity by pursuing a different rule of construction from what we recognize. It may be that the views of the Kansas court in respect to this matter are not in harmony with those expressed by us in *United States* v. *Reese*, 92 U. S. 214; *Trade Mark Cases*, 100 U. S. 82; *United States* v. *Harris*, 106 U. S. 629, and *Baldwin* v. *Franks*, 120 U. S. 678. We shall not consider that question nor the reconciliation of the supposed conflicting views suggested by the Chief Justice of the State. The power to determine the meaning of a statute carries with it the power to prescribe its extent and limitations as well as the method by which they shall be determined. (Justice Brewer in Smiley v. Kansas, 196 U. S. 447, 455.)

The decision of the highest court of a state that a statute is not in conflict with the constitution of the state, is conclusive on the Federal courts. (Rasmussen v. Idaho, 181 U. S. 198; Carstairs v. Cochran, 193 U. S. 10.)

The settled rule of this court is that, even in a case where we may exercise an independent judgment, any reasonable doubt will be resolved in favor of that construction of the state statute which has been adopted by the court of last resort in that State. *Burgess* v. *Seligman*, 107 U. S. 20; *Flash* v. *Conn*, 109 U. S. 371, 379; *Clark* v. *Bever*, 139 U. S. 96; *Board of Liquidation* v. *Louisiana*, 179 U. S. 622. (Justice Brown in Yazoo & Mississippi Valley R. Co. v. Adams, 181 U. S. 580, 583.)

IV

ACT No. 2972 DOES NOT INFRINGE ANY TREATY BETWEEN THE UNITED STATES AND CHINA

Petitioners fail to cite any treaty of the United States with some nation other than China, in which the subjects of that nation are granted the right to use their own language in bookkeeping. It may be told for sure that there is none. Plainly, bookkeeping is a matter of local law, and being such, power to legislate on said matter is not among those surrendered by the States to the Federal Government. Moreover, Act No. 2972 applies equally to natives and foreigners, be they Chinese, Japanese, Germans, French or of any nationality whatsoever.

The court below in the case of Yick Woo *versus* Hopkins (68 Cal., 294, 305–396) laid down the doctrine that a regulation which applies alike to all persons engaged in a given pursuit, without distinction as to nationality, residence, age, sex, or condition, is not, when otherwise regular and valid, subject to the criticism of being in violation of treaty obligation existing between the United States and China. This statement of the California court was not disturbed by this Court when the case was appealed to it (Yick Woo v. Hopkins, 118 U. S. 356). In another California case (*Ex parte* Ah Fook, 49 Cal. 402, 405), Judge McKinstry, referring to the Sixth Article of the Treaty between the United States and the Empire of China, concluded at Washington on July 28, 1868, which provided that—

"Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions, in respect to travel or residence, as may be enjoyed by the citizens or subjects of the most favored nation,"

said:

We can but think that to give to the general language of the treaty a construction which would deprive both the State and the United States Government of this power of *self-protection* would be a departure from the evident meaning and purpose of the high contracting parties.

In Patstone v. Pennsylvania, 232 U. S. 138, 145–146, this Court, speaking through Mr. Justice Holmes, said:

The defence under the treaty with Italy of February 26, 1871, 17 Stat. 845, appears to us to present less difficulty. The provisions relied upon are those in Article 2, giving to citizens of Italy the right to carry on trade and to do anything incident to it upon the same terms as the natives of this country; in Article 3, assuring them security for persons and property and that they "shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon

the natives" and in Article 24 promising to the Kingdom of Italy the same favors in respect to commerce and navigation that may be granted to other nations. We will say a word about each.

The last article is supposed to make applicable a convention with Switzerland (proclaimed November 9, 1855, 11 Stat., 597) providing against more burdensome conditions imposed upon the residence of Swiss than upon that of citizens. But Article 24 refers only to commerce and navigation and the case must stand wholly upon Articles 2 and 3. As to Article 2 it will be time enough to consider whether the statute can be construed or upheld as precluding Italians from possessing a stock of guns for purposes of trade when such a case is presented. The act was passed for an object with which possession in the way of trade has nothing to do and well might be interpreted as not extending to it. There remains then only Article 3. With regard to that it was pointed out below that the equality of rights is equality only in respect of protection and security for persons and property. The prohibition of a particular kind of destruction and of acquiring property in instruments intended for that purpose establishes no inequality in either respect. It is to be remembered that the subject of this whole discussion is wild game, which the State may preserve for its own citizens if it pleases. *Geer* v. *Connecticut*, 161 U. S. 519, 529. We see nothing in the treaty that purports or attempts to cut off the exercise of their powers over the matter by the States to the full extent. *Compagnie Francaise de Navigation a Vapeur* v. *State Board of Health*, 186 U. S. 380, 394, 395.

Referring to the above case, Mr. Justice McKenna, in Heim v. McCall, 239 U. S. 175, 194, said:

The treaty with Italy was considered in *Patstone* v. *Pennsylvania*, 232 U. S. 138, 145, and a convention with Switzerland (as in the present case) which was supposed to become a part of it. It was held that a law of Pennsylvania making it unlawful for unnaturalized foreign born residents to kill game, and to that end making the possession of shotguns and rifles unlawful, did not violate the treaty. Adopting the declaration of the court below, it was said "that the equality

of rights that the treaty assures is equality only in respect of protection and security for persons and property." And the ruling was given point by a citation of the power of the State over its wild game which might be preserved for its own citizens. In other words, the ruling was given point by the special power of the State over the subject matter, a power which exists in the case at bar, as we have seen.

From the foregoing cases the general proposition may be inferred that a treaty should not be so construed as to infringe upon the special power of the State over a given matter, such as bookkeeping in the instant case. For—

> In determining the effect of a treaty, it will be presumed that the United States did not intend to deprive any State of the right to exercise any of its sovereign powers. (Puget Sound Agricultural Co. v. Pierce County, 1 Wash. Terr. 159.)

Throughout the brief of petitioners there floats the accusation that Act No. 2972 is a hostile legislation whose secret purpose is to drive Chinese merchants out of business. This uncorroborated assertion is eloquently denied by the history of this Act and by the present friendly relations between the Chinese residents, our kith and kin, and the native population, which relations were a thing of yore even before the first Spanish soldiers came upon the Philippine shores. On the other hand, the operation and effect of Act No. 2972 would not, as above shown, bring about any wholesale sweeping of the Chinese from the field of business as foretold by the petitioners. Conceding, however, that such would be the result of the Act, it must be borne in mind that the right of the Government to subsist, to hold its own lest it should break down is paramount. It is elemental that taxation means even destruction, and that for public purposes burdens may in certain cases be imposed without compensation. With regard to hostile legislation,

Mr. Justice Field said in Soon Hing v. Crowley, 113 U. S. 703, 710:

The principal objection, however, of the petitioner to the ordinance in question is founded upon the supposed hostile motives of the supervisors in passing it. The petition alleges that it was adopted owing to a feeling of antipathy and hatred prevailing in the city and county of San Francisco against the subjects of the Emperor of China resident therein, and for the purpose of compelling those engaged in the laundry business to abandon their lawful vocation, and residence there, and not for any sanitary, police, or other legitimate purpose. There is nothing, however, in the language of the ordinance, or in the record of its enactment, which in any respect tends to sustain this allegation. And the rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferrible from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives considered as the moral inducements for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the imposibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile.

In closing, we believe it only fitting to repeat these oft-quoted statements made by the great Chief Justice Marshall:

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution are constitutional.

The question whether a law be void for its repugnancy to the Constitution, is at all times a question of much delicacy

which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligation which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.

WHEREFORE, the respondents respectfully pray that the decision of the Supreme Court of the Philippine Islands in this case be affirmed.

Respectfully submitted,

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